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No. 35] NEW DELHI, SATURDAY, AUGUST 31, 1968/BHADRA 9, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह भाग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

मोदिस

NOTICE

नीचे लिखे भारत के असाधारण राजपत्र 20 अगस्त, 1968 तक प्रकाशित किये गए—

The undermentioned Gazettes of India Extraordinary were published up to the 20th August, 1968:—

Issue No.	No. and Date	Issued by	Subject
274	S.O. 2750, dated 2nd August, 1968.	Ministry of Law	The names of the members elected by the elected members of the Legislative Assembly of the State of Haryana for the Council of States of the same State.
275	S.O. 2751, dated 3rd August, 1968.	Central Board of Direct Taxes.	The Income-tax (Fourth Amendment) Rules, 1968.
276	S.O. 2752, dated 5th August, 1968.	Ministry of Information and Broadcasting.	Approval of the film, as specified therein.
277	S. O. 2753, dated 5th August, 1968.	Ministry of Commerce.	The Imports (Control) Fifth Amendment Order, 1968.
278	S.O. 2754, dated 6th August, 1968.	Do.	The Export of Minerals and Ores—Group II. (Inspection) Amendment Rules, 1968.
279	S.O. 2776, dated 9th August, 1968.	Do.	Recognition of the Gram, Rice and Oilseeds Merchants' Association, Bombay for a further period of one year from the 10th August, 1968, upto the 9th August, 1968.

Issue No.	No. and Date	Issued by	Subjects
280	S.O. 2777, dated 9th August, 1968.	Ministry of Commerce.	Recognition of the Vanaspatti Manufacturers' Association of India, Bombay for a further period of one year from the 10th August, 1968 upto the 9th August, 1968.
281	S.O. 2778 dated 9th August, 1968.	Ministry of Labour, Employment and Rehabilitation.	Referring an industrial dispute for adjudication to the Industrial Tribunal, Bombay.
282	S.O. 2814, dated 12th August, 1968.	Ministry of Information and Broadcasting.	Approval of the films as specified therein.
283	S.O. 2815, dated 19th August, 1968.	Election Commission, India.	Calling upon the elected members of the Legislative Assembly of the State of Gujarat to elect a person in the Council of States of the said State.
	S.O. 2816, dated 19th August, 1968.	Do.	Appointment of dates for the above election (S.O. 2815).
	S.O. 2817, dated 19th August, 1968.	Do.	Fixation of hours for the above election (S.O. 2815).
	S.O. 2818, dated 19th August 1968.	Do.	Designating the Secretary Gujarat Legislative Secretariat to be the Returning Officer of the above election (S.O. 2815).
	S.O. 2819, dated 19th August, 1968.	Do.	Appointing the under Secretary, Gujarat Legislative Secretariat to assist the Returning Officer for the above election (S.O. 2815).
284	S.O. 2820, dated 20th August, 1968.	Ministry of Commerce.	Quality Control and pre-shipment inspection of Palmyra fibre.

ऊपर लिखे ग्रसाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइस्न, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जाएंगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुंच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(एका मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विविध प्राविष्टि और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION OF INDIA

New Delhi, the 31st July 1968

S.O. 2892.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 22nd March, 1968, by the High Court of Delhi, New Delhi, in Election Petition No. 1 of 1967.

IN THE HIGH COURT OF DELHI AT NEW DELHI

ELECTION PETITION No. 1 of 1967

1. Amar Nath Gupta son of Shri Bhola Nath, aged 52 years, profession business, resident of House No. 3163, Phatak Nanak Chand Charkhe-walan, Delhi-6.
2. Hem Chand son of Shri Sohan Lal Jain aged 53 years, resident of House No. 2000, Mohalla Naugharah, Maliwara, Delhi-6.

Petitioners

Versus

Shri Ram Gopal Shawlwala son of Shri Nand Lal R/o 1862, Gali Matawali, Maliwara, Delhi-6.

Respondent

S. K. Kapur, J. (oral)

In this Election Petition challenging the election of Ram Gopal Shawlwala respondent to the Lok Sabha from Parliamentary Constituency No. 5, Chandni Chowk, Delhi, the petitioners are electors in that Constituency. Notification calling the electors to elect candidates was issued on January 13, 1967. January 20, 1967 and January 23, 1967 were the last dates for filling of the nomination papers and for the withdrawal thereof respectively. Polling took place on 19th February, 1967, and in all nine candidates contested election, from this Constituency, to the Lok Sabha. Hafiz Ali Bahadur contested as an independent candidate while Sham Nath was nominee of the Congress Party. There is a serious controversy so far as the respondent is concerned in as much as he claims to be an independent candidate, having the support of Jan Sangh Party, while the petitioners allege that the respondent was, in fact, a Jan Sangh candidate. One Amrit Lal Jindal, who had been nominated as a candidate by the Jan Sangh, filed his nomination papers on January 19, 1967, but withdrew the same on January 23, 1967. Gurdial Singh Chauhan and Sanwal Dass, being Republican and S.S.P. candidates respectively, also contested the election. There were 16 Municipal Wards and 219 Polling Stations in the Parliamentary Constituency. Two Municipal Wards constituted one Metropolitan Council Constituency and it is appropriate to mention the names of some of the candidates for election to the Corporation and Metropolitan Council. From Kalan Masjid area Sham Kishore Gupta and Ram Babu Maheshwari were Jan Sangh Candidates for the Corporation and the Metropolitan Council respectively. The Metropolitan Council Constituency consisted of Kalan Masjid and Kucha Ram areas. Ram Babu Maheshwari won at the election. Jambu Prasad was a Jan Sangh candidate for the Corporation from Dariba while Kishan Lal Cutpiecewale was a Jan Sangh candidate from Dariba and Maliwara areas for the Metropolitan Council. Mohd. Ajmal Khan and Master Noor-ud-Din were Jan Sangh candidates from Matia Mahal area for the Corporation and the Metropolitan Council respectively. Anwar Dehlvi contested the election as a Jan Sangh candidate for the Metropolitan Council from Ballimaran and Naya Bans Constituency. Kishan Lal Goyal and Vaid Vidya Rattan were Jan Sangh candidates for the Corporation from Ballimaran and Naya Bans areas respectively. From I'arash Khana Constituency Atiq-ul-Rehman and Muni Lal Jain were the Jan Sangh nominees for the Corporation and the Metropolitan Council respectively. These names have been mentioned by me as one of the points made by the petitioners was that as a matter of policy Jan Sangh had set up Muslim candidates in areas having Muslim predominance and Ali Bahadur had been set up by the Jan Sangh in pursuance of that policy to neutralise Muslim votes which otherwise would have gone to the Congress. According to Mr. Rameshwar Dial, the learned counsel for the petitioners, the *modus operandi* adopted by the Jan Sangh was that there used to be a joint election propaganda by the respondent with the other Jan Sangh candidates for the Corporation and the Metropolitan Council in their different Constituencies falling within the larger Constituency of the respondent. Total votes in the said Parliamentary Constituency were about 2 lacs while the total votes polled were 1,33,786. The respondent secured the maximum number of votes being 58,928, while Sham Nath and Hafiz Ali Bahadur got 41,778 and 21,605 voted respectively. According to Mr. Rameshwar Dial, one fact which has a considerable bearing on the case, and of which he reminded me several times in the course of his arguments, is that there were about 55,000 Muslim votes, a large part of which were expected to be cast in favour of the Congress and, therefore, if some of the Muslim votes were taken away by a non-Congress candidate

it would have helped the respondent. The allegations in the petition are only of corrupt practices. One of the allegations is that the respondent paid Rs. 500/- to Hafiz Ali Bahadur to enable the latter to deposit his security while the other allegations relate to the distribution and display of certain pamphlets and posters etc.

Before I take up the discussion of the evidence, it is necessary to consider the nature of the burden of proof in such matters. Mr. Rameshwar Dial, the learned counsel for the petitioners, does not dispute that the charge of corrupt practice is in the nature of a criminal charge and, therefore the petitioners are expected to prove the allegations of corrupt practices beyond any reasonable doubt. He, however, says that the burden is not exactly the same as in a criminal case because there are certain qualifications, namely :—

- (1) though a finding of corrupt practice cannot be based on mere preponderance of probabilities and a clear and cogent proof beyond reasonable doubt is necessary but still the respondent's evidence should, unlike in a criminal case, be taken into consideration for deciding whether or not corrupt practices have been proved ;
- (2) in a criminal case an accused person may not produce any evidence but in election cases certain circumstances may raise an obligation against the respondent to produce evidence on certain matters and his failure to do so would entitle the Court to draw an adverse inference in the same manner as in any other civil trial ;
- (3) if the respondent withholds evidence which he could produce an adverse inference should be drawn that if produced the evidence would have gone against the respondent and
- (4) when full evidence has been led by both the parties then the burden of proof is as much immaterial in an election case as in any other civil case.

Mr. Rameshwar Dial relies on *Gangi Reddy v. Anianeya Reddy*, 22 E.L.R. 261 at p.268, *Sheopal Singh v. Ram Pratap*, A.I.R. 1965 S.C. 677 at p. 679, and *Kuwan Lal, v. Custodian Evacuee Property* A.I.R. 1961 S.C. 1316 at p. 1319, in *Gangi Reddy's* case their Lordships of the Supreme Court said “Burden of proof has two distinct meanings, viz., (i) the burden of proof as a matter of law and pleading, and (ii) the burden of proof as a matter of adducing evidence. Section 101 deals with the former and section 102 with the latter. The first remains constant and the second shifts.”

In that case the allegations against the elected candidate were that in two leaflets he had made false statements against the petitioner in the election petition, believing them to be false or not believing them to be true. The said petitioner appeared as a witness and denied those allegations. He also placed certain circumstances before the Court indicating a clear motive on the part of the elected candidate to make false allegations. It was held that a Court could accept the evidence of the petitioner and, consequently, the burden shifted on the returned candidate to dislodge the assertions of the petitioner. In *Sheopal Singh's* case their Lordships of the Supreme Court said—

“The burden of proof as a matter of law and as a matter of adducing evidence is on the respondent who, seeks to get the election set aside, to establish corrupt practice, but, if he adduces sufficient evidence, as in this case we are satisfied he has, the burden of adducing evidence shifts on the appellant. That apart when the entire evidence has been adduced in the case the question of burden of proof becomes merely academical.”

Mr. Marwah, the learned counsel for the respondent, on the other hand, suggests that the “burden on the petitioners to prove corrupt practice is as heavy as in any other criminal trial. It appears to me that the charge of corrupt practices, being in the nature of a criminal charge, the petitioners must prove the same beyond reasonable doubt. Of course, the burden, may in certain circumstances, shift on certain matter in the sense that if the petitioner has led cogent evidence to prove those matters the respondent may be expected to dislodge the same, but primarily and, in the first instance, the proof of corrupt practices must depend on the evidence of the petitioner. Mr. Marwah points out that in cases where the question is whether or not statements in certain pamphlet or poster or other publication alleged against a candidate as to his personal character are correct or not and that person swears that they are not correct then and then alone, and in no other case, does not the burden shift to the respondent. It is not, however, necessary in the circumstances of this case to categorise all such cases where the burden shifts. That takes me to the examination of the evidence of the parties.

The first allegation of corrupt practice is the subject-matter of issues Nos. 10 and 11, which are as under :—

“10. Whether respondent No. 1 paid Rs. 500/- to respondent No. 2 on 20th January 1967 gift with the object of inducing respondent No. 2 to stand as a candidate at the election ?

11. In case issue No. 10 to be decided in favour of the petitioners, whether the payment of the above amount constitutes corrupt practice ?”

The suggestion of the petitioners is that the respondent was approached by Jan Sangh to contest the election but he insisted that unless a dummy Muslim candidate was set up to neutralise the Muslim votes expected to be cast in favour of the Congress he would not be willing to contest. For this reason efforts were made by various persons to find out a Muslim candidate willing to contest as a dummy candidate and ultimately the choice fell on Hafiz Ali Bahadur, who agreed to stand as a dummy candidate. Hafiz Ali Bahadur had no money and, therefore, the respondent supplied him Rs. 500/- for the purpose of depositing the security. Further details of this aspect will be dealt with when considering the evidence of the parties. The evidence of the petitioners consists of—

- (a) eye-witnesses who saw Rs. 500/- being paid by the respondent to Hafiz Ali Bahadur;
- (b) witnesses who did not see the payment but saw the respondent and Hafiz Ali Bahadur in the election office on 20th January, 1967, the date on which the money, is alleged to have been paid;
- (c) witnesses who said that Jan Sangh approached certain Muslim to contest the election to the Lok Sabha;
- (d) witnesses in support of the allegation of the petitioners that Hafiz Ali Bahadur and the respondent had the same polling agents at polling station No. 155;
- (e) witnesses who spoke about some persons having approached Hafiz Ali Bahadur to speak in public meetings but he said that he will not speak against Jan Sangh;
- (f) witnesses who attended public meetings addressed by Hafiz Ali Bahadur whereat he did not speak against Jan Sangh; and
- (g) witnesses who spoke about Hafiz Ali Bahadur touring Jama Masjid area in the company of Master Noor-ud-din, a Jan Sangh candidate, and some other local workers.

The eye-witnesses are: Sayeed Khan (P.W. 24), mohd. Syed Billali (P.W. 42) and H. S. Kaushal (P.W. 51). Mohd. Syed Billali (P.W. 42) *inter alia* stated that there was a meeting called by Anwar Dehlvi, who was contesting election for the Metropolitan Council as a Jan Sangh candidate, at his house on 10th January, 1967, which was attended by the witness that at that meeting ways and means were discussed for helping Jan Sangh in the election that Master Noor-ud-Din, Atiq-ul-Rehman Kidwai, Afzal Peshwari and Ram Babu Maheshwari were also present that "it was suggested by Shri Ram Babu that in the areas where predominance was of Muslim voters, Muslim candidate should be set up and in areas where predominance was of Hindus but there were considerable Muslim voters, Hindu Jan Sangh candidate should be set up besides a dummy independent Muslim candidate so that Muslim voters in favour of the Congress may be deflected" that Ram Babu also suggested that the religious feelings of the Hindus and Muslims should be aroused by making appeals to them on the basis of their religion not to vote for the Congress but Afzal Peshwari protested against that and said that he would not permit religion to be brought in politics that Afzal Peshwari, therefore, left the meeting that Anwar Dehlvi again met the witness on 14th January 1967, at the witnesses' house and informed him that Jan Sangh was desirous of nominating the respondent as its candidate but the respondent's condition was that he would agree to contest the election only if an independent influential dummy Muslim candidate was set up for the purpose of neutralising the Muslim votes of the Congress; that Anwar Dehlvi also informed the witness that he had a talk with three or four persons such as Moulana Mazar Mufti and Dr. Mirza Ahmed Ali but they had declined to contest the election; that the name of Hafiz Ali Bahadur was then suggested because he had recently issued a poster that Muslims should set up their candidates to defeat the Congress that the witness suggested to Anwar Dehlvi to approach Hafiz Ali Bahadur whose name Anwar Dehlvi approved; that Anwar Dehlvi again went to the witness after two days and informed him that Hafiz Ali Bahadur was not willing to contest the election and it had, therefore, been decided to nominate Amrit Lal Jindal as a Jan Sangh candidate and Sheikh Mohd. Abdullah as a Muslim independent dummy candidate; that on 20th January, 1967, Anwar Dehlvi went to the witness again at about 10-15 A.M. and said that Hafiz Ali Bahadur had been persuaded and that the witness should go and sign Hafiz Ali Bahadur's nomination papers as a proposer; that the witness, therefore, went with Anwar Dehlvi to the respondent's shop in Moti Bazar and was there introduced to the respondent by Anwar Dehlvi; that two other persons were present at the shop and the respondent directed one of the two persons to "bring him to the Fountain in Chandni Chowk"; that the respondent then took some money from the cash box and the respondent, Anwar Dehlvi and the witness went to the Fountain in Chandni Chowk; that the person sent by the respondent to bring "him" reached the Fountain accompanied by three other persons and those three persons, Anwar Dehlvi, the respondent and the witness took two taxies and went to the election office at about 11 or 11-15 A.M. that they saw Hafiz Ali Bahadur and Sayeed Khan (P.W. 24) waiting at the election office that Anwar Dehlvi introduced Hafiz Ali Bahadur and Sayeed Khan to the respondent; that the respondent, the witness, Hafiz Ali Bahadur, Sayeed Khan and the aforementioned other three persons went near the counter in the election office, stood under a tree and the respondent took out five hundred rupee notes and gave them to Hafiz Ali Bahadur; that Hafiz Ali Bahadur then completed his nomination forms and one of such forms was signed by the witness as a proposer while the other form was signed by Sayeed Khan (P.W. 24) as a proposer; that the respondent told Hafiz Ali Bahadur to deposit Rs. 500/- as security and Hafiz Ali Bahadur and Sayeed Khan went to the counter to deposit the money; and that the respondent

deposited his security thereafter and then all of them, namely, Hafiz Ali Bahadur, the witness, the respondent, Sayeed Khan and the three other above-named persons went to the Court of Shri Rajinder Jain for filing the nomination papers. This witness further stated that for the purpose of the election he converted his fortnightly paper into a daily paper and on the same date, that is, 20th January, 1967, he filed a declaration for such conversion in the Press Branch, which was located in the same building in which Shri Rajinder Jain's Court was situated, at about 3-30 P.M. and that declaration form was filled in by Anwar Dehlvi. In cross-examination the witness stated that till he got the summons he had no knowledge about the election petition and he had no talk with either of the petitioners or any one also about the facts disclosed by him in his evidence; that he never suggested to Hafiz Ali Bahadur to contest the election; and that he had not known Hafiz Ali Bahadur though he had heard about him. He, however, said that during the elections he visited Hafiz Ali Bahadur's house, for the first time, on or about 12th February, 1967, but had been visiting his house prior to the election. He was, however, unable to give the number of Hafiz Ali Bahadur's house. It was also admitted by the witness that on 20th January, 1967, he filed his own nomination papers at 1-20 or 1-25 P.M. in the Court of Shri Chaturvedi. It has been strongly urged by Mr. Marwah that a person who had to file his own nomination papers as well as the declaration form on that very day would be more interested in following up his own matters rather than spending all the time in attending to Hafiz Ali Bahadur's nomination papers etc. Mr. Marwah further points out that, as admitted by the witness, he deposited his security on the last date i.e. January 20, 1967. The case set up by the witness was that his nomination forms had been filled in at 9-00 A.M. at his house and he had deputed his younger brother to deposit his security and meet him in Shri Chaturvedi's Court. This witness, however, withdrew his candidature "probably on 27th January, 1967". One more criticism levelled against this witness by Mr. Marwah is that Anwar Dehlvi met the witness at about 10 or 10-15 A.M. on the 20th January, 1967, and told him that Hafiz Ali Bahadur had agreed to contest the election and the witness should go and sign the nomination form of Hafiz Ali Bahadur. Till that time the witness did not know that he will be required for that work. In that situation it was difficult to accept that the witness would have got his nomination form etc. completed at 9-00 A.M. when he did not know that he would have to accompany Hafiz Ali Bahadur to the election office. Mr. Marwah also says that he is an interested witness because he was appointed as Imam of a mosque on Church Mission Road by the Delhi Wakf Board of which Mir Mushtaq Ahmed, till recently President of the Pradesh Congress Committee, was a member.

The next eye-witness to the payment of Rs. 500/- is Sayeed Khan (P.W. 24). He was proposer in one of the nomination forms. He went to Hafiz Ali Bahadur's house on January 20, 1967, at about 10-00 A.M. when Anwar Dehlvi was also present and was persuading Hafiz Ali Bahadur to stand for the election. Hafiz Ali Bahadur was not agreeing. According to this witness, Anwar Dehlvi impressed upon Hafiz Ali Bahadur the importance of defeating the Congress and told him that that aim could be achieved only if he agreed to contest the election. The witness further that—

"Shri Anwar Dehlvi and further said that the amount of deposit in connection with the nomination would be given by Shri Ram Gopal Shawlwala (respondent). Shri Anwar Dehlvi had asked Shri Ali Bahadur to come to the Court and had said that he would bring Shri Ram Gopal Shawlwala also to the court and the rest of the matter would be settled there. I had taken Shri Ali Bahadur to the court."

Rest of the story about the payment of Rs. 500/- by the respondent to Hafiz Ali Bahadur as given by this witness is broadly the same as disclosed by Mohd. Sayeed Billali (P.W. 42). The witness, however, did not speak about any talk at the time of payment of Rs. 500/- between the respondent and Hafiz Ali Bahadur. The criticism levelled by Mr. Marwah against this witness is that—

- (1) The witness admittedly was on visiting terms with Mir Mushtaq Ahmed, a Congress candidate at the election and also President of the Delhi Provincial Congress Committee and, therefore, an interested witness, and
- (2) reference to the nomination form Exhibit p. 1 shows that the signatures and the other writing are in different ink thereby indicating that the witness merely signed the blank form as a proposer and, therefore, the story that the form was filled in the election office and signed by the witness there was not correct.

H. S. Kaushal (P.W. 51) was a candidate for Corporation from Naya Bans Constituency in 1967 and according to this witness he was merely a covering candidate for the Congress. He filed his nomination papers on 19th January, 1967. The witness stated that he went to the election office on January 20, 1967, to fetch a voters' list that he left his house at about 10-15 A.M. reaching the election office at about 10-30 or 10-45 A.M. that he knew the respondent as well as Hafiz Ali Bahadur that in the election office he saw Hafiz Ali Bahadur, the respondent, Anwar Dehlvi and 4 or 5 other persons standing together; and that he saw the respondent taking out some money from his pocket and giving it to Hafiz Ali Bahadur. According to this witness, Hafiz Ali Bahadur, after taking the money, went into the queue for depositing the security and after two or three minutes he was followed by the respondent who also went and stood in the queue. Hafiz Ali Bahadur

came out of the queue after depositing the money and the respondent also followed him after substituting somebody also for him in the queue for depositing the security. The witness further stated that he then saw the respondent. Anwar Dehlvi, Hafiz Ali Bahadur and one or two other persons going out of the compound of the election office that he followed then because he suspected that "something was wrong somewhere in Shri Hafiz Ali Bahadur accepting the money from the respondent" that the party went to Shri Rajinder Jain's Court and the witness followed them there also that the respondent and Hafiz Ali Bahadur entered the Court room of Shri Rajinder Jain and the witness kept waiting outside when he met Dr. Dhawan and told Dr. Dhawan about "the new alliance between the respondent and Shri Hafiz Ali Bahadur". In this cross-examination the witness stated that for purchasing the list of voters he deposited Rs. 15/- on January 20, 1967, and went personally to deposit the money. The respondent summoned the records of the election office, including the counter-foils of the receipts issued and the cash book showing the money deposited on 20th January, 1967, on account of security or the price of the voter's lists through Muni Lal Jain (R.W. 3). In the first instance Muni Lal said that though he had brought all the counter-foils of the moneys deposited on 20th January, 1967, yet that may not be hundred per cent accurate statement of the position and the cash book would exactly show who deposited what amount and on what date. The witness then brought the cash book as well and neither the counter-foils of the receipts nor the cash book showed any amount deposited by H. S. Kaushal (P.W. 51) on 20th January, 1967, or, as a matter of fact, any sum of Rs. 15/- by any one on 20th January, 1967. Though the witness said that price of the voters' list was Rs. 9/- but according to Muni Lal Jain (R.W. 3), an Accountant in the election office and Head Clerk in that office at the relevant time, price of the voters' list was about Rs. 5/- and odd paise. Mr. Marwah says that omission of the said deposit in the cash book, copy whereof is Exhibit R.W. 9, is, by itself, sufficient to completely discard the evidence of this witness. Mr. Rameshwar Dall, the learned counsel for the petitioners, on the other hand, points out that the cash book mentions certain numbers of the receipts such as Nos. 0695524 to 0695530, Nos. M. 418496 to M. 418500 and counter-foils of those receipts have not been produced and that receipt 'No. M. 418535 has been entered twice, which show that all the counter-foils of the receipts issued on 20th January, 1967, have not been produced and no reliance can be placed on the counter-foils. He further points out that the cash book had been according to the statement of Muni Lal Jain (R.W. 3), prepared from the counter-foils of the receipts at the end of each day of the deposits or sometimes even later. Khub Ram Jajoria (P.W. 23), who was a candidate for the Metropolitan Council as well as for Lok Sabha said that he had gone to deposit his security on 20th January, 1967, and saw the respondent, Hafiz Ali Bahadur, Anwar Dehlvi, and J. N. Vashisht (P.W. 32) in the election office between 12-30 P.M. to 1.00 P.M. The respondent in his statement said that this witness bore a grudge towards him because he had once got the witness expelled from an Arya Vir Dal Meeting in 1944. Dr. I. C. Dhawan (P.W. 28) saw both the respondent and Hafiz Ali Bahadur at about 1-30 P.M. in the verandah outside Shri Rajinder Jain's Court. The respondent on the other hand, stated that he had never even seen Hafiz Ali Bahadur before 19th February, 1967, and it was on 21-2-1967 that he, for the first time, accosted Hafiz Ali Bahadur in the Exhibition Ground where counting of votes was going on. J. N. Vashisht (P.W. 32), a candidate for Metropolitan Council, went to deposit his security and saw Hafiz Ali Bahadur the respondent and Anwar Dehlvi in the election office at about 1-00 or 1-10 P.M. on 20th January, 1967. This witness admitted having contacts with Sham Nath for about 9 or 10 years and was a Congress candidate at the election. Mr. Marwah points out that though Khub Ram Jajoria (P.W. 23) stated that he saw Deep Chand also in the queue depositing security but according to this witness Deep Chand did not go to the election office on that day and his security was deposited by the witness. Mufti Zia-ul-Haq (P.W. 50) stated that Atiq-ul-Rehman, a Jan Sangh candidate for the Metropolitan Council (in fact he was a candidate for the Corporation) asked him to contest election to Lok Sabha as that would help the respondent but the witness declined. This witness, according to Mr. Marwah, was an office-bearer of the Congress and it was, therefore, impossible that he would be approached for such an unholy alliance. Sham Nath (P.W. 56) said that Zia-ul-Haq (P.W. 50) told him about certain persons having approached him for contesting the election. This witness, however, did not say for what purpose was the approach made. He further stated that Zia-ul-Haq did not name the persons who had approached him on the ground that he did not like to disclose the same.

Regarding Hafiz Ali Bahadur and the respondent having the same polling agents at polling station No. 155, Asaf Ali (P.W. 36) claimed to be the polling agent of the respondent, Anwar Dehlvi and Kishan Lal Goyal. He, however, stated that he was not the polling agent of any other candidate. The respondent in his statement denied that he had appointed Asaf Ali as his polling agent and said that he had signed several blank forms for appointment of polling agents and someone may have filled in that form. Mohd. Israfil (P.W. 27) claimed to be the polling agent of Sham Nath and corroborated Asaf Ali (P.W. 36) that the latter was the polling agent of the respondent. He, however, said that Hafiz Ali Bahadur had no polling agent. The evidence of these two witnesses, however, even if taken at its face-value, does not prove the allegation of the petitioners that the respondent and Hafiz Ali Bahadur had common polling agents. Shri S. N. Dixit (P.W. 43), the Presiding Officer of polling station No. 155, proved the polling agents' appointment forms of the respondent, Hafiz Ali Bahadur and Sham Nath said that the polling agents appointed had signed those forms in his presence. This witness, however, was not in a position to state whether the persons appointed as polling agents actually worked as such or not. Munna Lal

Gupta (P.W. 5) approached Hafiz Ali Bahadur for making a speech in a public meeting in favour of his brother Rajinder Kishore Aggarwal, who was contesting as an independent candidate for the Corporation from Lal Darwaza Constituency. Mr. Marwah says that this witness was interested in as much as he was working for Sham Nath and was Vice President of Sahyogi Samaj of which Rajinder Kishore (P.W. 31) was the Secretary and Sham Nath the Chairman as disclosed by Kishan Lal (R.W. 16). No such question was, however, asked from the witness by the respondent. This was, however, put to the witness on behalf of the respondent that he had come to make the statement on account of his association with Sham Nath. Munna Lal Gupta (P.W. 5), however, admitted that he did not know Hafiz Ali Bahadur before and had never heard his speech in public. Rajinder Kishore Aggarwal (P.W. 31) also approached Hafiz Ali Bahadur for a similar purpose but the latter told him that he would not speak against Jan Sangh. A.M. Zutshi (P.W. 45) asked Hafiz Ali Bahadur why he was contesting the election and Hafiz Ali Bahadur told him that he must make Jan Sangh win and defeat the Congress. Aziz Ahmad Warsi (P.W. 9) was produced to prove that he attended a public meeting addressed by Hafiz Ali Bahadur in which the latter did not speak against Jan Sangh. This witness, however, stated that Hafiz Ali Bahadur asked the Muslims to vote for him. Harbans Lal (P.W. 39) merely saw Hafiz Ali Bahadur touring with Master Noor-ud-Din, a Jan Sangh candidate, in Jama Masjid area accompanied by some local workers.

The respondent's version, on the other hand, is that his wife had been imprisoned in connection with the anti-cow slaughter agitation and had to be released from the jail on 20th January, 1967. He went to the jail, which is at a distance of about 12 miles from Dewan Hall, to receive her, met Hawa Singh (R.W. 2), Assistant Jail Superintendent, and requested him that as the respondent had a number of other matters to attend he would be grateful if the respondent's wife could be released earlier. There were in all about 239 prisoners to be released on that day and he, therefore, remained outside the jail from 9-45 A.M. to about 11-30 A.M. He had to stay on there because he and his other companions including Dr. Girdhari Lal Dhalla (R.W. 7), who also had gone to receive the prisoners, had to make transport arrangement for the 239 released prisoners. The respondent further stated that he had gone to the jail straight from his Krishan Nagar house and came back to Dewan Hall accompanied by his wife and a few others; that till then he had not decided to stand for the election though some persons were pressing him for that; that he reached Dewan Hall at about 12 or 12-15 P.M., stayed there for about five minutes and went back to his house in Krishan Nagar; that at about 12-30 P.M. he received a telephonic call from Dr. Girdhari Lal Dhalla when the latter first talked to his wife and told her to send the respondent to Dewan Hall as his nomination papers had to be filed but the respondent's wife told Dr. Dhalla that about election matters he should talk to the respondent direct; that Dr. Dhalla did talk to the respondent; that the respondent went back to Dewan Hall at about 1-00 P.M. and by that time the respondent's friends had sent Prabhat Kumar (R.W. 28) to deposit his security and at that time the respondent's two nomination forms were filled in, one by Des Raj (except that in that form the name of the respondent's father was filled in by the respondent himself) and one by the respondent himself. Prabhat Kumar and Dr. Girdhari Lal Dhalla (R.W. 7) signed the two forms as proposers; and that from Dewan Hall the respondent, accompanied by Dr. Dhalla, Prabhat Kumar and Vaid Prahlad Dutt went straight to the Court of Shri Rajinder Jain and filed his nomination papers at 2-10 P.M. The respondent also stated that there was no question of his meeting Hafiz Ali Bahadur as alleged by the petitioners as he did not even know him at least till 23rd January, 1967. In his version the respondent is supported by Prabhat Kumar (R.W. 28), Dr. Girdhari Lal Dhalla (R.W. 7) and Hawa Singh (R.W. 2). Hawa Singh (R.W. 2) brought the jail register showing that the respondent's wife was, in fact, released from the jail on January 20, 1967. Hawa Singh also stated that on 20th January, 1967, at about 9-45 A.M. he met the respondent outside the jail when the respondent requested him to see that his wife was released as soon as possible. Hawa Singh claimed to have known the respondent as the latter had been confined to jail on several occasions and had also been visiting the jail to see his wife and other prisoners. About Girdhari Lal Dhalla (R.W. 7), Mr. Rameshwar Dial points out that in his statement recorded on 22nd February, 1968, the witness stated that he remained in the jail area till 10-30 A.M. but when his statement was continued on 27th February, 1968, he improved upon his version to make it fit in the story proposed to be put forth by the respondent in his evidence and stated that he remained in the jail precincts till 11-30 A.M. and reached Dewan Hall at 12-00 noon or 12-15 P.M. Mr. Rameshwar Dial also says that (1) if the respondent and his wife left Dewan Hall at 12-15 P.M. they may not have even reached their Krishan Nagar House by 12-30 P.M.; (2) in any case, if Dr. Dhalla and the respondent were together till 12-15 P.M. there was no point in Dr. Dhalla talking to the respondent again at 12-30 P.M.; and (3) Dr. Dhalla's earlier statement that he stayed in the jail area till about 10-30 A.M. derived support from the fact that the witness admitted that he reached the jail in a taxi at about 9-15 or 9-30 A.M. and detained the taxi for one hour. Regarding the nomination forms being filled in at Dewan Hall, as alleged by the respondent, Mr. Rameshwar Dial says that Dr. Dhalla admitted that the list of voters was not available in Dewan Hall and in absence thereof the nomination forms could not have been filled in there. Dr. Dhalla sought to explain this on the ground that Des Raj, father of Prabhat Kumar, as well as Prabhat Kumar, were carrying slips which contained the voters' numbers of the persons concerned, including the respondent. According to Mr. Rameshwar Dial, if the respondent had really not made up his mind, as suggested by him

to contest the election till about 1.00 P.M. then there was no reason why Des Raj and Prabhat Kumar should have been carrying slips containing the voters' numbers. Regarding Hawa Singh (R.W. 2), Mr. Rameshwar Dial contends that he had brought the jail register which either contained the time of release of each prisoner or it did not. If it contained the time it was the duty of the respondent to have the register placed on the record as that alone could have lent veracity to the statement of the witness that the respondent's wife was released between 10 and 10.30 A.M. If on the other hand, the register did not contain that entry then no reliance could be placed on the oral statement of Hawa Singh particularly when there were in all 239 prisoners to be released and Hawa Singh had him self admitted that sometimes the prisoners could be released even at 9.00 A.M. Mr. Rameshwar Dial further points out that Prem Chand Gupta (R.W. 25) had stated that he reached the election office at 11 A.M. and when he was in the queue for depositing his security, Prabhat Kumar (R.W. 28) was eight persons ahead of him in the queue and that showed that Prabhat Kumar could not have gone to the election office to deposit the respondent's security at about 12.00 noon as alleged on the side of the respondent. The serial number of the counter-foil of the receipt of deposit of security by Prem Chand Gupta is 0695838 while that of the respondent is 0695829. I may straightaway say that I would not attach much value to this criticism by Mr. Rameshwar Dial as Prem Chand Gupta admitted that he left the election office at 1.00 P.M. and he might have made a slight mistake about the time. The fact, however, remains that the serial numbers of the counter-foils of the receipts mentioned above show that the persons who deposited the respondent's security was eight or nine persons ahead of Prem Chand Gupta. That is the rival version of the parties with respect to the payment of Rs. 500/- to Hafiz Ali Bahadur. Mr. Marwah also relies on the statement of Anwar Dehlvi (R.W. 29) who denied the allegations made in this behalf by P.W. 24 and P.W. 42, Sayeed Khan and Mohd. Sayed Billali respectively. Anwar Dehlvi (R.W. 29) denied any efforts to set up a Muslim candidate having been made as alleged by Mohd. Sayed Billali (P.W. 42) and further stated that he did not see Hafiz Ali Bahadur at all in that connection; that he did not even know the respondent till 23rd January, 1967; that he having later come to know the respondent he could say that he neither saw the respondent nor Hafiz Ali Bahadur in the election office on 20th January, 1967, and that no money passed from the respondent to Hafiz Ali Bahadur in his presence. Mr. Rameshwar Dial points out that this witness admittedly remained in the Jan Sangh camp throughout the day and could not have any occasion to see who all were present. This criticism, however, overlooks the fact that according to the petitioners, Anwar Dehlvi was a party to that payment. Before I say anything on the individual witnesses I may point out that there are certain inherent improbabilities in the story put forth by the petitioners in this behalf—

- (1) Sayeed Khan (P.W. 24) and Mohd. Sayed Billali (P.W. 42) did not know the respondent admittedly till January 20, 1967. The respondent should have known that if he paid Rs. 500/- to Hafiz Ali Bahadur that would entail his disqualification even if he be ultimately elected. In that situation, it is not reasonable to believe that the respondent would have paid Rs. 500/- to Hafiz Ali Bahadur in the presence of utter strangers.
- (2) Hafiz Ali Bahadur should have known that contesting election would entail not only the deposit of Rs. 500/- but also an expense of a much larger amount, yet I have it from the evidence of Sayeed Khan (P.W. 24) that—

“Shri Anwar Dehlvi was pursuing the matter. He had impressed upon Shri Ali Bahadur that the aim was to inflict defeat on the Congress and that aim could be achieved only if Shri Ali Bahadur would contest the election. Hafiz Ali Bahadur had replied that he had not resources and was unable to contest the election. Shri Anwar Dehlvi had then said that he had been deputed by the Jan Sangh which intended to put up Shri Ram Gopal Shawlwala as its candidate and that Shri Ram Gopal would contest only if Shri Ali Bahadur would do so. Shri Anwar Dehlvi had, further, said that the amount of deposit in connection with the nomination would be given by Shri Ram Gopal Shawlwala.”

In the election petition the petitioners had alleged in paragraph 18 that respondent Ram Gopal induced Hafiz Ali Bahadur to stand as a candidate for Lok Sabha from Chandni Chowk Parliamentary Constituency and incurred expenses concerning the election campaign of respondent No. 2. It appears from the order of H.R. Khanna, J. dated September 6, 1967—

“Although other allegations of financial help by respondent No. 1 to respondent No. 2 were made in the petition, the learned counsel for the petitioners has stated that for the precise corrupt practice they confine themselves to the allegation that on 20th January, 1967, at the election office, Delhi, respondent No. 1 paid a sum of Rs. 500/- to respondent No. 2 as a gift with the object of inducing him to stand as a candidate at the election.”

In view of this, I am necessarily driven to proceed with this case on the assumption that the only allegation made by the petitioners was that the respondent paid Rs. 500/- to Hafiz Ali Bahadur as a gift for standing at the election. Mr. Rameshwar Dial, the learned counsel for the petitioners points out that that statement amounted to nothing more than saying that the petitioners will rely only on the payment of Rs. 500/- as a corrupt practice and that did not debar him from alleging in aid of the present

issues that, in fact, the other expenses of Hafiz Ali Bahadur had also to be borne by Ram Gopal Shawlwala. There is not even an iota of evidence that the respondent ever undertook or agreed to pay any money or bear any expenses of Hafiz Ali Bahadur besides Rs. 500/- As a matter of fact, the statement of Sayeed Khan (P.W. 24) suggests to the contrary. Mr. Rameshwar Dial says that as a matter of fact he did want to adduce evidence in this behalf but he was disallowed by order passed by Mr. Justice Om Parkash on October 31, 1967. Be that as it may, the fact remains that before me there is no evidence showing that any other financial aid was either promised or given by respondent Ram Goapl. In that situation, it appears difficult to accept that Hafiz Ali Bahadur could have agreed to stand as a dummy candidate on the behest of the respondent or his friends merely because security amount of Rs. 500/- was being paid to him by the respondent. That apart, there is other evidence, which I shall discuss presently, that Hafiz Ali Bahadur contested the election seriously with the hope of being successful thereat.

- (3) Sayeed Khan (P.W. 24) stated that he went to Hafiz Ali Bhadur's house on 20th January, 1967, at 10.00 A.M. when he found Anwar Dehlvi still persuading Hafiz Ali Bahadur to stand for the election and Hafiz Ali Bahadur not agreeing to the same. This witness said that till about 16th, 17th or 18th January, 1967, Hafiz Ali Bahadur was of the opinion that every seat against the Congress should be contested but he was not desirous of constesting himself. It is, therefore, clear that even till 10.00 A.M. on the 20th morning, Hafiz Ali Bahadur had not agreed to stand for the election and Anwar Dehlvi finally succeeded in persuading him after discussion on the 20th morning to contest the election and asked him to reach the Court while he would go and fetch the respondent. Anwar Dehlvi then went to Mohd. Sayed Billali (P.W. 42) and then both of them went to the respondent's shop. It looks rather improbable that everything could have been achieved between 10 and 10.15 A.M. on 20th January, 1967, that is, persuading of Hafiz Ali Bahadur to contest the election, sending him to Court, going and picking up Mohd. Sayed Billali (P.W. 42) and then going to the respondent and asking him to pay Rs. 500/- to Hafiz Ali Bahadur and that too in the presence of strangers. I do not suggest that in this limited period these things would have been physically impossible, but having regard to the fact that Anwar Dehlvi could not have known (1) that Billali (P.W. 42) would be available (2) that respondent would be at his shop and (3) that he would pay Rs. 500/- straightforwardly it would be more reasonable to expect that he would have taken Ali Bahadur with him rather than send him to court so that they did not lose track of each other. The reluctance on the part of Ali Bahadur also should have induced Anwar Dehlvi to take Ali Bahadur with him.
- (4) It is difficult to believe that Mohd. Sayed Billali (P.W. 42), who had himself to deposit his security on the 20th January, 1967, not in the same election office but at a different place, namely, the office of the Corporation would forget about his own interest just to go and sign the nomination form of Hafiz Ali Bahadur. It is not disputed that the person signing the nomination form was not required to go to the election office. I, therefore, fail to understand why Mohd. Sayed Billali (P.W. 42) instead of merely signing the nomination form went all the way to and spent all the time in the election office for that purpose. That again sounds to me as something highly improbable.
- (5) It is the petitioners' own case that considerable pressure was being brought to bear on the respondent to agree to contest the election and the respondent all along expressed willingness to do so only if a dummy Muslim candidate was set up to neutralise the Muslim votes of the Congress. Jan Sangh people were keen to set up the respondent as their candidate and were anxiously in search for a dummy Muslim candidate. If the respondent was so strong in his attitude that he would not contest the election unless Jan Sangh found a dummy Muslim candidate, I fail to see why the respondent would agree to pay Rs. 500/- on account of security money to Hafiz Ali Bahadur and not tell the Jan Sangh to do so.

It also appears from the various circumstances mentioned hereafter that Hafiz Ali Bahadur contested the election seriously and never acted as a dummy. Aziz Ahmad Marsi (P.W. 9) himself stated that he attended a public meeting addressed by Hafiz Ali Bahadur when Hafiz Ali Bahadur asked the Muslims to vote for him. The number of votes obtained by Hafiz Ali Bahadur also provided a clue to this fact. Then there is a handbill, Exhibit R.W. 29/4, produced by the petitioners, wherein Ali Bahadur had published calculation showing how the votes were likely to be divided resulting in his success. It is also in evidence that Muslim students from Aligarh and Delhi College were doing work for Hafiz Ali Bahadur. This fact is borne out by the statements of Abdul Aziz (P.W. 11), Mufti Atiq-ul-Rehman (P.W. 16), Akhlaq Hussain (P.W. 22) and Chaman Lal Batra (P.W. 46). Afsar Bijnori (P.W. 8) stated—

"I had heard him (Hafiz Ali Bahadur) speaking and had attended his meetings. His meetings were attended by thousands of persons".

Naz, Ansari (P.W. 18) also said—

“Shri Ali Bahadur used to say in his speeches that his aim was twofold, namely, that he should be elected and Shri Sham Nath should be defeated. The same views were expressed by him in “Daur-a-Jadid”.

A number of Muslim papers were actively supporting Hafiz Ali Bahadur. Naz Ansar (P.W. 18) *inter alia* stated—

“Out of the journals and newspapers only Aljamiat was opposed to Shri Ali Bahadur. . . .

The large majority of Muslim voters was in favour of Shri Ali Bahadur.” Sayeed Khan (P.W. 24) said—

“It was the confirmed view of the Muslims that the Jan Sangh party is anti-Muslim. The Muslims were of the view that neither the Congress nor the Jan Sangh could protect Muslim interests and that some independent Muslims should be elected to Parliament.”

Shamim Ahmad (P.W. 29) also attended a meeting addressed by Hafiz Ali Bahadur. He stated—

“I had attended one meeting only convened by Shri Ali Bahadur. “It was on the 15th or 16th February, Shri Ali Bahadur had appealed to the audience to cast votes in his favour. There was a large gathering.”

It also appears from the evidence of Akhlaq Hussain (P.W. 22) that Hafiz Ali Bahadur commanded respect amongst the Muslims. This witness stated—

“It is correct that Muslim students used to do election work for Shri Ali Bahadur. It is correct that I had said in a meeting that the students had gone mad and were carrying the dead-body of the old man. It is correct that when I had said so, a demonstration was staged against me and I had to seek the help of police for my safety.”

That Hafiz Ali Bahadur was held in esteem by the Muslims has also been supported by Abdul Aziz (P.W. 11). Mufti Atiq-ul-Rehman (P.W. 16) also admitted that “there was great inclination in the Muslims to work for Shri Ali Bahadur”. The hand-bill Annexure ‘K’ and the poster Annexure ‘M’ also indicate that he was strongly appealing to the electorate to vote for him.

Against this story of the petitioners it looks extremely improbable that the respondent would go to the jail to receive his wife on the 20th January, 1967, the date she was due for his release. I find no reason to disbelieve Hawa Singh (R.W. 2) and, as a matter of fact, Mr. Rameshwar Dial made no criticism against the statement of this witness. If that evidence is accepted, then it conclusively proves that the respondent was out side the jail at about 9-45 A.M. on the 20th January, 1967, and at least till then the wife of the respondent had not been released. Hawa Singh (R.W. 2) stated that she was released sometime between 10 and 10-30 A.M. Even if the respondent left the jail a few minutes after 10 A.M. that is immediately after the release of his wife, without attending to the transport arrangement for the other prisoners, even then it would be practically impossible for the respondent to be at his shop as suggested by petitioners.

I would now like to say a few words about some of the witnesses of the parties in this behalf. So far as Mohd. Sayeed Billali (P. W. 42) is concerned, I have already said that as it is rather difficult to accept that leaving the filing of his own nomination paper and the deposit of his security, he would accompany the respondent to attend to a very minor job of only signing the nomination paper of Hafiz Ali Bahadur as a proposer. I have also said already that I find it difficult to accept that the respondent would have paid this gift or bribe of Rs. 500/- to Hafiz Ali Bahadur in the presence of utter strangers like Sayeed Khan (P. W. 24), and Mohd. Sayeed Billali (P. W. 42). The story put forth by these two witnesses also does not inspire confidence having regard to the improbabilities therein as discussed by me earlier. So far as H. S. Kaushal (P. W. 51) is concerned, I think the omission of deposit of the price of the voters’ list by him in the cash book (W. Exhibit R. W. 3/9) discredits the witness. Mr. Rameshwar Dial’s criticism that some of the counter-foils of the receipts corresponding to the entries in the cash book have not been produced, does not, in my opinion, carry much weight in view of the fact that Muni Lal Jain (R. W. 3) had himself stated that he could be hundred per cent sure about the deposits only from the cash book. It is not impossible, therefore, that some of the counter-foils may have been misplaced but the fact remains that there is no entry in the cash book about any deposit by H. S. Kaushal or, as a matter of fact, about any deposit of Rs. 15/- by anyone on that date. There is, however, one entry of Rs. 9/- in the cash book on 20th January, 1967, relating to someone else. Once the statement of Hawa Singh (R. W. 2) that the respondent was outside the jail on the 20th January, 1967, at 9-45 A.M. and that the respondent’s wife was released from custody between 10 and 10-30 A.M. is believed, it necessarily leads one to the conclusion that the story of Mohd. Sayeed Billali (P. W. 42) about his meeting the respondent at his shop cannot be accepted. I am also inclined to accept the statement of the respondent that he remained in the precincts of the jail till about 11-30 A.M. on that day. I say so because that appears to me to be very probable. There is abundant evidence on the record to show that the respondent

was one of the main persons directing the anti-cow slaughter agitation. Hawa Singhy (R.W. 2) also stated that the respondent used to go to the jail to see his wife and other anti-cow slaughter agitation prisoners and used to supply articles of food etc. to them. In that situation, the only possible conclusion is that the respondent, who had gone to the jail at 9-45 A.M., would stay there till all the anti-cow slaughter agitation prisoners—239 in number—were released. According to Hawa Sindh (R.W. 2) release of the prisoners started at about 10 A.M. The release of all the prisoners would naturally take considerable time. The story put forth by the respondent that he remained outside the jail premises till 11-30 A.M. and thereafter went to Dewan Hall reaching there at about 12 noon or 12-15 P.M., therefore, sounds probable. If that be so, then it becomes difficult to accept the evidence of the petitioners' witnesses who alleged to have seen the respondent in the election office between 11-00 A.M. and 12-00 noon. The evidence of Dr. I. C. Dhawan (P.W. 28) that he saw the respondent at about 1-30 P.M. in the company of Hafiz Ali Bahadur outside Shri Rajinder Jain's Court is not also wholly inconsistent with the story put forth by the respondent. It is not impossible that he may have seen both the respondent and Hafiz Ali Bahadur as both of them filed their nomination papers in the Court of Shri Rajinder Jain on January 20, 1957. I may, however, say that I accept the respondent's version that he went to Shri Rajinder Jain's Court at about 2-00 P.M. because his nomination papers were filed at 2-10 P.M.

Having come to the conclusion that the respondent's version about his going to the jail to receive his wife and other prisoners in connection with the anti-cow slaughter agitation and his being there till about 11-30 A.M. on 20th January, 1967, is correct, it really becomes unnecessary to consider the evidence of witnesses like Khub Ram Jajoria (P.W. 23) and J. N. Vashisth (P.W. 32) because if the respondent's version is correct then the whole fabric of the petitioners' story that the respondent was approached in his shop and from there taken to the election office, falls to the ground. I am not prepared to go so far, as suggested by Mr. Marwah, the learned counsel for the respondent, that the evidence of the witnesses who had contacts either with the Congress or with Sham Nath should be discarded on that ground alone. Mr. Marwah draws my attention to *Brij Mohan Singh v. Priva Bai Naren Sinha and others*, A.I.R. 1965 S.C. 282, and the observations that "it has to be noticed in this connection that this witness is President of Aurangabad Mandal Committee of the Congress and admittedly worked for the Congress before the election and did election campaign in Kunda in Aurangabad at the last General Elections for Priya Brat Babu who was the Congress candidate. It is not possible in these circumstances to place any reliance on his testimony" and suggests that decision of the Supreme Court is that in election cases the interest of a britness in a particular party should *per se* be a ground for rejection of their testimony, which helps such a party. I do not agree with that and hold that *per se* it cannot be a ground for rejection of their evidence. All the circumstances have to be taken into consideration and a conclusion arrived at whether the witness concerned is telling the truth. In the circumstances of this case, however, I would not be willing to place implicit faith on the evidence of J. N. Vashisth (P.W. 32) and Khub Ram Jajoria (P.W. 23) when they say that they saw the respondent in the election office on January 20, 1967, J. N. Vashisth (P.W. 32) had admittedly contacts with Sham Nath for a period of about nine to ten years and there is evidence to show that Khub Ram Jajoria (P.W. 23), apart from having contacts with the Congress, bore a grudge towards the respondent.

Coming now to the next set of witnesses, namely, Jan Sangh approached and wanted a Muslim to stand for the Lok Sabha, I am of the view that the respondent is right when he says that he had not till the earlier part of the 20th day of January, 1967, made up his mind to contest the election. In these circumstances, therefore, it is impossible to hold that the respondent had anything to do with some Muslim being approached for being set up as dummy candidates. In any case, as I have said earlier, the evidence on the record shows that Hafiz Ali Bahadur seriously contested the election with all hopes of success and was not a dummy candidate. In this view, it is sufficient to dispose of these witnesses by saying that even if some Muslims had been approached by Jan Sangh, it could not have been in pursuance of an alleged scheme, as set up by the petitioners, to help the respondent. It is also in evidence that Amrit Lal Jindal had been announced as a Jan Sangh candidate and actually filed his nomination paper on January 19, 1967, which he withdrew on January 23, 1967, and that evidence is also destructive of the petitioners' case on this point. Dr. Ishwar Chandra Dhawan (P.W. 28) said that—

"It is correct that Jan Sangh had set up Shri Amrit Lal Jindal as a candidate for the Lok Sabha on the 19th January. Jan Sangh had declared Shri Jindal as its candidate about three weeks before 19th January, 1967."

The version of the respondent finds further support from the evidence of K. Narindra (R.W. 10), whose evidence I have no reason to disbelieve, and the articles in the newspapers, Exhibits R.W. 10/1 and R.W. 10/2. Moreover, Mohd. Sayed Billahi (P.W. 42) spoke about the meeting on 10th January, 1967, but it is rather interesting that he admittedly did not mention about it to anyone.

So far as the allegation regarding Hafiz Ali Bahadur and the respondent having the same polling agents is concerned, the evidence of Asif Ali (P.W. 36) and Mohd. Israil (P.W. 37) does not bear out the petitioners.

Mr. Rameshwar Dial, the learned counsel for the petitioners, says that Dhirat Ram Khosla, who supplied Rs. 500/- to Prabhat Kumar for depositing the security of the respondent, Prahlad Dutt, who accompanied the respondent from Dewan Hall to Shri Rajinder Jain's Court, Des Raj father of Prabhat Kumar, who filed in one of the nomination forms of the respondent, vaid Onkar Pershad, who, according to the evidence of the respondent, advised the later to stand for the election, had not been produced. The petitioners themselves having failed to prove the charge on their own evidence, it is unnecessary to consider this question in detail. The fact, however, remains that the respondent has produced sufficient evidence which is destructive of the story put forth by the petitioners in this behalf.

In view of the above discussion, issues Nos. 10 and 11 are decided against the petitioners and in favour of the respondent.

That takes me to issues Nos. 1 and 2, which are as under:—

- “1. Whether calendars similar to Annexure 'C' to the petition were distributed on 5-2-1967 in Phatak Telian under the direction, with the consent and in the presence of respondent No. 1? ¶
2. In case issue No. 1 be found in favour of the petitioners, whether the distribution and display of the aforesaid calendars constitutes corrupt practice ?”

The charge against the respondent, therefore, is that calendars similar to Annexure 'C' to the petition were distributed on 5th February, 1967, in Phatak Telian. The respondent has taken the extreme position that no calendar or any other handbill or poster was ever published. Apart from the question of publication, two main questions arise in connection with this Annexure—

- (1) Does that constitute the use of, or appeal to, religious symbols for the furtherance of the prospects of the election of the respondent or for prejudicially affecting the election of any candidate ; and
- (2) does it amount to an appeal on the ground of religion, caste, or community in violation of sub-section (3) of section 123 of the Representation of the People Act, 1951.

Before deciding these questions it is necessary to read] the relevant provisions of the said sub-section, which is as under:—

“The following shall be deemed to be corrupt practices for the purposes of this Act :—

* * * *

- (3) The appeal by candidate or his agent or by any other person with the consent of a candidate or his election agent to *vote* or *refrain* from voting for *any person* on the ground of *his* religion, race, caste, community or language or the use of, or appeal to religious symbols or “the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of *any candidate*.”

So far as the appeal on the ground of religion is concerned, the requisites of this sub-section appear to be that—

- (i) the appeal must be by a candidate or his agent or by any other person with the consent of the candidate or his election agent;
- (ii) the appeal must be to vote for or refrain from voting for any person on the ground of 'his' religion etc.; and
- (iii) the appeal must be for the furtherance of the prospects of the election of the candidate for or on whose behalf the appeal is made or for prejudicially affecting the election of any candidate.

The first question that requires determination, therefore, is as to what does the word "his" refer to in the part of sub-section (3) which says“.....for any person on the ground of his religion.....”. The perusal of the section shows that the said word "his" refers to any candidate in whose favour or against whom an appeal is made. In other words the pronoun "his" qualifies the words "any person". Mr. Rameshwar Dial, the learned counsel for the petitioners, very fairly concedes that the word "his" cannot refer either to the voter or to the agent or to the election agent of the candidate. What he says is that if an appeal is made to the voters not to vote for a candidate then that appeal should be on the ground of religion etc. of that candidate, while if an appeal is made to vote for a candidate the appeal must be on the ground of religion etc. of that candidate. He further says that though the name of Hafiz Ali Bahadur does not appear in the Annexure but in substance and effect the appeal in the calendar is to the Muslim voters not to vote for the Congress and, therefore, the Congress candidate Sham Nath, but vote for Hafiz Ali Bahadur to further the prospects of success of the Jan Sangh

candidate by neutralising the Muslim votes of the Congress and since the appeal is on the ground of Muslim religion, the religion of Hafiz Ali Bahadur, the calendar offends section 123(3). In the alternative, he says that this is an appeal to the electorate not to vote for Sham Nath because he was a Hindu and anti-Muslim. The Annexure mentions three candidate,—Sham Kishore, Jan Sangh nominees for the Corporation, Ram Babu Maheshwari, Jan Sangh candidate for the Metropolitan Council, and Ram Gopal respondent. At the bottom of the Annexure is an appeal to the voters to vote for the abovenamed three persons and make them successful. The Annexure, therefore, is an appeal to vote for these three candidates. On the construction of section 123(3) of the said Act it must, therefore, be held that the Annexure will offend the said section if the appeal is on the ground of religion etc. of these three candidates to vote for them or if the appeal is not to vote for Ali Bahadur on the ground of Ali Bahadur's religion. It is a possible view to take that if for instance there are three candidates, a Muslim, a Hindu and a Sikh and an appeal is made in the name of Muslim religion to vote for the Hindu candidate, thereby appealing to the electors in the name of Muslim religion not to vote for the Muslim candidate, such an appeal may offend section 123(3). It is, however, not necessary to decide this question in this case because in the circumstances that obtain here that question will arise only if one can read into the calendar an appeal on the ground of Muslim religion not to vote for Ali Bahadur. But it is not possible to do so. It is the petitioners' own case that the pictorial part of the Annexure which allegedly contains Kalimah, picture of Qaba Sharif, minaret of Masjid-e-Haram and picture of Quran Sharif, was intended to arouse the sentiments and feelings of Muslim voters. But it is difficult for me to read into the language of the appeal any implicit negative appeal in the name of Muslim religion not to vote for Ali Bahadur. In that view, it cannot be said that it was an appeal to the voters to vote for the three candidates named in Annexure 'C' on the ground of religion of these three persons or not to vote for Ali Bahadur on the ground of his religion. I may refer to two decisions in this behalf. In *Lalsing v. Vallabhdas*, A.I.R. 1967 Gujarat 62, it was held—

"Now, the controversy in our Court centred round the proper interpretation of the pronoun 'his' used in the following expression 'on the ground of his religion, race, caste, community or language'. A Division Bench of this Court has decided that the pronoun 'his' is referable to the candidate and not to the voter.

"However, Mr. Patwari contends that the pronoun 'his' is not only referable to a candidate but also to an agent, so that if an appeal is made by an agent persuading an electorate to vote in favour of a particular candidate on the ground that the agent's religion, the action of the agent would come within the mischief of sub-section (3) of section 123. In our judgment, there is no merit in this submission. Therefore, in order that the sub-section may apply, the appeal must be to vote or refrain from voting for any person on the ground of his religion. The pronoun 'his' in the aforesaid phraseology is clearly referable to the person preceding the words 'on the ground of' and the person referred to is the person in whose favour the vote is to be cast or not to be cast."

Again, in *Jagdev Singh Sidhanti v. Pratap Singh Daulta and others*, A.I.R. 1965 S.C. 183, it was observed—

"The corrupt practice defined by clause (3) of section 123 is committed when an appeal is made either to vote or refrain from voting on the ground of the candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of section 100 read with section 123(3). Therefore it is only where "the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed."

That takes me to the other question whether or not the other part of sub-section (3) of section 123 has been violated by use of religious symbol. The pictorial part of Annexure 'C' according to the petitioners represents, as I have already mentioned, Allah in big letters, picture of Qaba Sharif, minaret from Masjid-e-Haram in Mecca, picture of Quran Sharif and a Kalimah from Quran Sharif on the lefthand top corner. So far as the word "Allah" is concerned, it cannot be said to be a religious symbol. It is "the Arabic name used by Muslims of all nationalities for the one true God, compounded of *al* the definite article, and *lah*, god. The same word is found in Hebrew and Aramaic as well as in ancient Arabic" (*vide* Encyclopaedia Britannica p. 643). It is true that Muslims generally use the word "Allah" for God but that is no more than the Arabic word for God and cannot be treated as a religious symbol in the sense laid down by their Lordships of the Supreme Court as discussed hereinafter. So far as the book, described as Quran Sharif by the petitioners, the minaret and the alleged picture of Qaba Sharif, are concerned the petitioners produced Shaukat Ali Fehmi (P.W.6), Mohd. Musthasan Farooqi (P.W.7), Asad Madni (P. W. 12), Mufti Atiq-ul-Rehman (P.W. 16), Mohd. Main (P.W. 47) and Mufti Zia-ul-Haq (P. W. 50). Shaukat Ali Fehmi (P. W. 6) said that he saw calendars like Annexure 'C' displayed in shops and pasted on walls in Turkman Gate locality; that the Kalimah, which is the basic creed of Muslim religion, is written on the top of the calendar; that the picture of the holy Quran is also depicted in the calendar; that a part of an Ayat from the holy Quran is written on

the one page of the picture of Quran Sharif; that the crescent and minaret of Qaba Sharif, the picture of Qaba Sharif and the rosary are also depicted in the calendar; that the rosary is not an exclusive religious symbol of the Muslim religion; and that some of the voters had felt offended at the calendar depicting religious symbols. In cross-examination he admitted that the Muslim religion does not prescribe any religious symbols; and that "I cannot cite chapter and verse in support of my assertion that what is depicted in Annexure 'C' constitute religious symbols". Mohd. Musthassan Farooqi (P.W.7) also spoke about having seen calendars like Annexure 'C' in Turkman Gate. He said that the calendar contains the Kalimah at the top; that Qaba, the holy Quran and the minaret of the mosque of Nabi are depicted on the calendar; that the picture of holy Quran shown in Annexure 'C' contains on one page an Ayat from the holy Quran; that the Kalimah is not mentioned in the holy Quran; that the Kalimah is the very basic creed of the Muslim religion; that the meaning of the Ayat from the Quran is "God helps those who oblige others"; that Allah is a proper noun and is an Arabic word which cannot be translated; that Allah is a religious symbol and everybody, including Hindus, may recite the name of Allah; that in the calendar, Annexure 'C', the only religious symbols are the word 'Allah', the pictorial representations of the minaret, the Qaba Sharif, the holy Quran and the Kalimah Sharif; and that the Kalimah is not mentioned in the holy Quran but that is the very basic creed of the Muslim religion. Asad Madni (P. W. 12) also stated that in the calendar there are pictorial representations of the holy Quran, Khana-e-Qaba, the rosary and the crescent. In cross-examination he admitted that there is no pictorial representation of Gumbad-e-Khizra; that pictorial representations are not the exact photographs of the objects sought to be represented; and that Mecca and Madina are two cities. According to this witness, the minaret in Annexure 'C' is the minaret of Khizra and not of Qaba Sharif. The witness was unable to give the difference between the minaret of Gumbad-e-Khizra and the minaret of Masjid-e-Haram in Mecca. He also stated that there is no Ayat in the holy Quran from which it could be inferred that the minaret and the crescent are religious symbols; and that "I cannot say whether the whole of the Kalimah is found in the holy Quran or not". The witness also said that "the picture of the book, depicted in the calendar, can be regarded as the picture of Quran Majid or of any other book".

Mufti Atip-ul-Rehman (P.W. 16) said that Annexure 'C' contains the pictorial representations of Khana-e-Qaba and the minaret of the mosque of Khana-e-Qaba; that the pictorial representation of the book has been depicted in such a way as to give it the appearance of the holy Quran; that a person who does not believe in the Kalimah cannot be a Muslim; and that the crescent is not of such an importance as other depictions in Annexure 'C'. According to the witness the writing on the book means that God likes him who oblige anyone. The witness admitted in cross-examination that "it cannot be inferred from the mere fact that an Ayat is written on a book that the book is holy Quran". Moulana Mohd. Mian (P.W. 47) said that at the top lefthand corner of Annexure 'C' is 'Kalimah-e-Toheed' which is the foundation of Muslims and Islam; that in the centre is a picture of Qaba and the minaret marked 'E' is associated with Islam and sacred places and appears to be a part of the courtyard in Masjid-e-Haram. He admitted that in Islam there is no religious symbol in the form of a picture; that Islam has not determined any particular shape or form of the minarets in mosques but the Muslims have developed one; that the pictures of minarets in different mosques may be different; that minarets do not find place in any religious book but are recognised in Islamic culture; that there can be minarets like the one in Annexure 'C' in other than religious buildings; and that Quran Sharif does not contain any such Kalimah as exists on the lefthand top corner of Annexure 'C'. The witness also admitted that it is not open to anyone to make any change whatsoever in giving a quotation from Quran Sharif and that "the 'Kalimah' on the lefthand top in Annexure 'C' is not in Quran Sharif in this form in the sense that 'La Elah Illillah' exists in Quran Sharif and so does 'Mohammed Rasul Allah' but combination of both does not exist in Quran Sharif anywhere". Speaking about the book and the writing thereon in Annexure 'C', the witness said—

"There is no one such page in the holy Quran which contains only the writing as contained on what I described as book, and marked 'X' in Annexure 'C'. The word 'Almohsneen' on book marked 'X' in Annexure 'C' means 'one who does good deeds'. A musalman will read a writing on the righthand page of the book marked 'X' in Annexure 'C' from the bottom towards the top. Words 'Vallah' and 'Yohibe' are two separate words. 'Vallah' means God and 'Yohibe' means loves. It depends on the writer, somebody may write this very word so as to read from top towards bottom, while some may read in the way it is written here. The books on Quran Sharif are always written in horizontal lines to be read from right to left."

Mufti Zia-ul-Haq (P.W. 50) also admitted that Kalimah as such does not exist in Quran Sharif and that nobody can make any change in the quotation from Quran Sharif and that minarets like the minaret in Annexure 'C' are also found in temples.

The respondent produced Shiv Dutt (R.W. 8), who claimed to have studied a large number of books on Islam, and according to him, none of the representation in Annexure 'C' constituted religious symbol. In the petition the petitioners' case regarding Annexure 'C' is that "the calend-

depicts Mecca, Medina and certain quotations (Aayats) from the holy Quran with the crescent and the words in Arabic 'Allah' and 'Lalil Illah Mohammad Rasool Allah' and a rosary". Mr. Marwah, the learned counsel for the respondent, says that the allegations in the petition are not what is sought to be said at the bar. Notwithstanding the alleged infirmity in the allegations in the petition, I would deal with each of the items, and, before I do so, like to say a few words about what constitutes a religious symbol. In *Jagdev Singh Sidhanti's case* their Lordships of the Supreme Court considered the question whether 'Om' flag could be regarded as a religious symbol. The question was examined in two branches—

- (i) Whether the word 'Om' has any special religious significance; and
- (ii) whether the use of 'Om' on a flag or pennant makes it a religious symbol.

Their Lordships of the Supreme Court said that the word 'Om' was respected by the Hindus generally and had a special significance in the Hindu scriptures. "But it is difficult to regard 'Om' which is a preliminary to an incantation or to religious books, as having religious significance. 'Om' it may be admitted is regarded as having high spiritual or mystical efficacy; it is used at the commencement of the recitations of religious prayers. But the attribute of spiritual significance will not necessarily impart to its use on a flag the character of a religious symbol in the context in which the expression religious symbol occurs in the section with which we are concerned. A symbol stands for or represents something material or abstract in order to be a religious symbol, there must be a visible representation of a thing or concept which is religious."

The test laid down by their Lordships of the Supreme Court, therefore, is that before anything can be termed as a religious symbol, it must represent something material or abstract and there must be a visible representation of a thing or concept which is religious.

Again, in *Ramanbhai v. Debhi Ajitkumar*, A.I.R. 1965, S.C. 669, the question before their Lordships of the Supreme Court was whether 'Dhurva Star' was a religious symbol. While holding that 'Dhurva Star' had no religious significance and its use in the manner made would not convert that use into use of a religious symbol, their Lordships of the Supreme Court observed :—

"It is impossible to say that any particular object, bird, or animal could be regarded as a 'symbol of the Hindu religion'. The basic concept of Hindu religion is that the supreme being is in every 'inanimate' object, plant, creature or person, i.e., in the entire creation and that the entire creation is within the Supreme Being. If, therefore, according to the fundamental concept of Hindu religion, God or Divinity is the reality or the substance of everything that exists, it would not be possible to say that any particular object is a symbol of the Hindu religion. It is true that various deities in the Hindu pantheon are associated with some specific objects, birds or animals. Thus, for example, Shiva is associated with a trident and a coiled cobra round his neck; Vishnu is associated with the cobra 'Shesha' on which he reclines as upon a bed; the eagle is associated with Vishnu as his vehicle; the goddess Lakshmi is associated with lotus upon which she stands and so on and so forth. Does it mean then that if a person uses a lotus or a cobra or a tride "as his election symbol he will be appealing to the religious sentiments of the people? The answer must be clearly in the negative."

In *Shubnath Deogram v. Ram Narain Prasad*, A.I.R. 1960 S.C. 148, the Jharkhan Party issued and distributed leaflets in verse wherein an appeal was made by a cock for the votes of the electorate. It was held that the leaflet contained an appeal to the voters on the ground of religion and that the appellant was guilty of a corrupt practice falling within the purview of sub-section 3 of section 123. Dealing with this case Mudholkar, J. said—

"The majority of the judges held that this leaflet contained an appeal to the voters on the ground of religion and that the appellant was guilty of a corrupt practice falling within the purview of sub-section (3) of section 123 of the Act. The conclusion of this Court was based not upon the mere fact of the use of the symbol of cock but it was based upon the nature of the appeal for votes made by the cock. In the leaflet the cock had said among other things: 'Give me chara in the shape of vote I am victorious. Do not forget me, otherwise I tell ye sons of men will suffer eternal miseries'. According to this Court this, in substance, amounted to saying that it would please to deities if they did so because the cock in its "turn was meant for sacrifice to the deities and it would displease them if they did not. The case is thus distinguishable from the one before us."

In *Ramanbhai's case*, their Lordships of the Supreme Court further held that the election literature should neither be judged strictly nor taken literally and the Courts ought not to read more in such literature than what appears to its face. From these decisions it emerges that symbol is a visible representation of a thing or concept which is religious. The basic characteristic of the symbol is its figurative quality and the second characteristic may be described as its perceptibility. The symbol must have its innate power which implies a power inherent within it that distinguishes it from the mere sign which is impotent in itself. Yet another important characteristic of the symbol is its acceptability and implies that the symbol is socially rooted and socially supported. (See Religious Symbols by Paul Tillich).

Under section 123(3) of the said Act, the appeal on the ground of religion etc. has a narrower scope than appeal by use of symbols as it must be an appeal on the basis of the religion of any person for or against whom the appeal is made. There is, however, no such limitation regarding the use of religious symbols. Further, it appears to me that before a person can be condemned on the ground of use of a religious symbol, it must be established that the object was, in fact, a religious symbol understood in the context of the same being socially rooted and socially supported. I have, therefore, necessarily to decide whether all or any of the objects in the pictorial part of Annexure 'C' are religious symbols. Mr. Marwah says that the calendar is nothing more than a work of art. I have already said that word "Allah" does not represent a religious symbol. So far as the minaret is concerned, I have it from the evidence of the petitioners themselves that such like minarets may be found on other buildings. There is no pictorial representation in the calendar which can show even remotely that this minaret is of Masjid-e-Haram. It must, therefore, be held that the minaret in Annexure 'C' is not a religious symbol. About the book, *Musti Atiq-ul-Rehman* (P.W. 16) said that from the mere fact that an Asyt is written on it it could not be said that the book is holy Quran. Similarly, Asad Madni (P.W. 12) said that it could be regarded as a picture of Quran Majid or of any other book. It is, therefore, not possible to say that the book is a religious symbol. About the part marked 'F' also, having regard to the evidence and the description given by the witness of 'Qaba Sharif' it is difficult for me to say that it is the pictorial representation of 'Qaba Sharif'. Mohd. Mian (P.W. 47) said that covering on 'Qaba' is always of black colour but in the picture it is blue. Again, even the door of entry into the 'Qeba Sharif' does not appear in the picture. It is difficult, therefore, to hold that a voter will look at the picture as that of 'Qaba Sharif'. According to the Dictionary of Islam by Hughes, 1935 Edition, Kalimah on the lefthand top corner means—

"There is no deity but God: Muhammad is the Apostle of God". The whole sentence as "it stands does not occur in the Quran; but the first part of the creed, "There is no deity but God, is in the Suratu Muhammad, or XLVIith chapter of the Quran, verse 21; and the second part, 'Muhammad is the Apostle of God', is in the Suratu 'I-Fath, or XLVIIith Chapter, verse 29. The first sentence is known as the Nafy and the Isbat, or the rejection (there is no deity) and the affirmation (but God), and is recited often as a religious office by the Sufi faquirs.

The whole creed frequently occurs in the Traditions, and is an oft-recurring clause in the daily prayer.

This Kalimah occupies a similar place in the Muslim religion to the 'Shema' 'Israil' of the Hebrew Bible in the Jews' religion. The Shema ('Hear') is the fourth verse of Dout.vi: 'Hear, O Israil, Jchovah our Elohim is one Jchovah'; which is frequently used in daily morning and evening service of the Jews. From the Traditions.....it appears that a something similar to this well known symbol of the Muslim creed, was in use amongst the ancient Arabians, and is still recited by Muslims, amongst whom it is known as the Talbiyah:

The recital of the Kalimah is the first of the five foundations or pillars "of practice, and, according to the Fawaidu 'sh-Shariah, every Muslim should recite it aloud at least once in his lifetime, and he should understand its meaning."

From this narration, it appears that this is an accepted concept in the Muslim religion. It also is a visible representation and, therefore, amounts to a visible representation of a concept and is a religious symbol. Since the use of one religious symbol is as offensive as use of more, the question whether or not the other symbols are also religious symbols loses its significance.

That takes me to the evidence as to the distribution of this calendar and the connection of the respondent therewith. The evidence on this may also be classified as under:—

- (1) Witnesses who saw these calendars displayed at the shops in Turkman Gate area;
- (2) Witnesses who received the calendar;
- (3) Witnesses who saw the calendar being distributed but did not receive it; and
- (4) Witnesses who saw the calendar stored in Sham Kishore's house.

It may be pointed out that the case of the respondent is that on 5th February, 1967, when the calendar is alleged to have been distributed, he was away to Shamli and adjoining areas in connection with the election campaign of T. C. Dileman (R.W. 15), who was a Jan Sangh candidate for Lok Sabha. Although the issue is as to whether or not the calendar, Annexure 'C', was distributed on 5th February, 1967, under the direction, with the consent and in the presence of the respondent, Mr. Marwah points out that none of the petitioners' witnesses gave the precise date, 5th February, 1967, on which they saw the distribution of the calendar. Under the first head the witnesses are Afzar Bijnori (P.W. 8), Shaukat Ali Fahmi (P.W. 6), Akhlaq Hussain (P.W. 22), Mohd. Musthassan Farooqi (P.W. 7), Munna Lal Gupta (P.W. 5), Rajinder Kishore Aggarwa

(P.W. 31), A. M. Zutshi (P.W. 45), Asad Madni (P.W. 12), Sham Nath (P.W. 56) and Zia-ul-Haq (P.W. 50). It may be pointed out that even if it is presumed that calendars similar to Annexure 'C' were displayed at various shops as alleged by the petitioners, the evidence would have no value unless the complicity of the respondent with their being displayed is established. Under the second group, namely, those who received the calendar, the witnesses are Munni carpenter (P.W. 17), Abdul Majid (P.W. 33), Mohd. Din (P.W. 34), Qayam-ud-Din (P.W. 35) and Abdul Majid (P.W. 49). Mr. Marwah's criticism about these witnesses is that—

- (1) as mentioned already, none of them say that the calendar was distributed on 5th February, 1967, as stated in the issue;
- (2) the most prominent in the calendar is the name of Sham Kishore and, therefore, this is destructive of the petitioners' case that Ram Gopal respondent had any complicity in its distribution, if at all it was distributed;
- (3) Exhibit R.W. 3/7, the list of polling stations, shows that Phatak Telian was in polling booths Nos. 214 and 215 and having regard to an extremely small number of Muslim votes in this area it is difficult to visualise that the respondent would indulge in such distribution and waste his energies thereon;
- (4) in any case, in Phatak Telian area there were two Muslim candidates contesting the election and the respondent could not have directed his efforts in that area; and
- (5) Ram Gopal respondent being an independent candidate, he could not have been a party to the publication of the calendar wherein he is shown as the candidate of Jan Sangh.

Mr. Marwah has drawn my attention to certain evidence indicating that Ram Gopal respondent was all through anxious to retain his independence and keep away from any alignment with Jan Sangh. Lastly, Mr. Marwah draws my attention to the statements of Rameshwar Nath (R.W. 23), Girdhari Lal Dhalla (R.W. 7), Gur Charan (R.W. 9), Anwar Dehlvi (R.W. 29), Rattan Lal (R.W. 11), Moti Ram (R.W. 12), T. C. Dheman (R.W. 15) and Sat Paul Sharma (R.W. 27) in support of his plea that on that particular day the respondent was touring in Shamli area and was not in Delhi. Munni (P.W. 17) has a tea stall in Phatak Telian and said that he saw one Shahbuddin distributing calendars like Annexure 'C' amongst the shopkeepers. He claimed to have received one such calendar about 14 days before the date of the polling. In cross-examination the witness said that he got the calendar on a day which was Sunday. This witness does not connect the respondent, in any manner, with the distribution. As a matter of fact, he was unable to give the names of the persons who accompanied Shahbuddin when the calendars were being distributed. Abdul Majid (P.W. 33) lives in Turkman Gate and stated that a calendar like Annexure 'C' was given to him by Ram Babu. He first said that he could not give the names of the persons who accompanied Ram Babu at the time of the distribution of the calendars but later stated that the respondent was one of those persons. In cross-examination he said he had received the calendar before February 3, 1967. If that be so, then no significance can be attached to the statement of this witness as the charge against the respondent is that calendars were distributed on February 5, 1967. Mohd. Din (P.W. 34) resides in Phatak Telian. He alleged that 14 or 15 days before the polling 14 or 15 persons went to his shop and gave a calendar to him and the respondent was one of such persons. To more or less similar effect is the evidence of Qayam-ud-Din (P.W. 35) and Abdul Majid (P.W. 49). Apart from the details of the statements, I would like to say that it is very easy in these matters to produce witnesses like this and it is very difficult to condemn a person and hold him guilty of a corrupt practice on oral evidence of this type. I can quite visualise the difficulty of the petitioners in producing more cogent evidence of the respondent's complicity, but difficulty cannot take the place of proof. Apart from that, there is one more difficulty in the petitioners' way, inherent in the very nature of the allegation. I cannot accept that in such small areas, where the number of Muslim voter was so insignificant, the respondent would himself accompany the party and go from shop to shop distributing the calendars at 8-00 A.M. when the shops may not have even opened. Moreover, it appears that these witnesses are interested in the Congress. It may be pointed out that 5th February, 1967, was Sunday and it is improbable that the respondent will resort to such a campaign of distributing calendars to shopkeepers on a closed day at 8 o'clock in the morning.

This takes me to the third category of witnesses for which there is the solitary evidence of Krishan Das Gupta (P.W. 4). This witness is a Congress worker and admittedly used to go on his rounds to the locality in connection with the Congress work. This witness was unable to give the name of any shopkeeper, or any person, to whom the calendar was given. A person who had been touring the locality in connection with the election work on behalf of the Congress could normally have mentioned some name in that area to whom the calendar was given.

Munna Lal Gupta (P.W. 5) is the witness under the fourth category who saw the calendar stored in Sham Kishore's house and it is unnecessary to discuss his evidence because he does not connect the respondent with the distribution.

That takes me to the evidence of the respondent that he was out of Delhi on February 5, 1967. The respondent sought to rely on a Visitors' Book maintained by Agnivesh Ayurved Bhavan and the entries made therein by several persons. Entry Exhibit R.W. 9/2 is the one alleged to have been made by the respondent in Shamli on 5th February 1967. Reliance is also placed on a handbill, Exhibit R.W. 9/1, which is alleged to have been distributed in Shamli and nearabout areas announcing the visit of the respondent on that day. These documents were not relied upon by the respondent. The case of the respondent is that he had no knowledge about the handbill and he did not remember his having made the entry Exhibit R.W. 9/2 in the Visitor's Book. He said that he was reminded of his visit on 5th February, 1967, to Shamli by one Jagdev Singh Sidhanti on 31st December, 1967, when the respondent approached him for obtaining a copy of the judgment in his case as one of the points arising in both the cases was common. The respondent said that it was during that talk that Sidhanti told him that he was in Shamli on 5th February, 1967, and, therefore, should not worry about the charge of distribution of any literature on that day. Even if that be so, the respondent took no steps to obtain permission of the Court till 28th February, 1968, when this book was produced and, therefore, on the ground of delay alone I am not inclined to entertain this evidence. Similarly, there is no clear proof of the fact that the respondent did not know about the handbill Exhibit R.W. 9/1 till 28th February, 1968, and, therefore, could not ask for permission to rely on or produce the document earlier. In spite of the rejection of these two documents, I am convinced that the respondent's evidence does establish that he was away to Shamli on February 5, 1967. It is not necessary to discuss in detail the evidence of various witnesses mentioned above and it is sufficient to say that nothing has been brought out justifying the rejection of their testimony. Witnesses from various adjoining localities stated that the respondent was, on 5th February, 1967, in Kairana, Shamli, Oon and other adjoining places, including Thana Bhavan. Mr. Rameshwar Dial's criticism of these witnesses may be noted. He says that T. C. Dheman (R.W. 15) said—

"There is no pucca road from Kairana to Oon except *via* Shamli. From Shamli to Oon there is a pucca road."

Mr. Rameshwar Dial draws my attention to the road map which shows that there is a pucca road from Kairana to Oon while part of the road from Kairana to Oon *via* Shamli is Kacha. Similarly, Sat Paul Sharma (R.W. 27), an agriculturist from Oon, who spoke about the respondent's visit to Oon on 5th February, 1967, and his addressing a public meeting there, stated—

"There is no pucca road from Oon to Kairana; and part of it is Kacha. The entire road from Shamli to Oon is pucca. I have been seeing this pucca road for the last 5 or 6 years".

Relying on the 1965 Road Map, Mr. Rameshwar Dial suggests that these witnesses did not appear to have even visited the various places mentioned by them. Mr. Rameshwar Dial also points out that the respondent in his evidence had introduced an improvement regarding the purchase of petrol by Guru Charan (R.W. 9) on their way from Delhi to Shamli. Mr. Rameshwar Dial also says that Guru Charan (R.W. 9) had wrongly stated that for going from Kairana to Thana Bhavan it was not necessary to pass through Shamli.

These minor matters do no induce me to discard the respondent's evidence on this point. May be pucca road was made after 1965 and Sat Paul (R.W. 27) may be making a slight mistake when he said that he had been seeing pucca road for 5 or 6 years. Even the 1965 Road Map shows that only a very small part of the road is Kacha. Various persons from different villages have come and spoken about the respondent's visit there and his having addressed public meetings there. Mr. Rameshwar Dial points out that all these witnesses are Arya Samajists and, therefore, interested in the respondent. Moti Ram (R.W. 12), however, denied that he had anything to do with Arya Samaj. The position regarding this aspect of the case is that if any one of the witnesses, who came from the vicinity of Shamli, is believed, the respondent's story stands proved. Having gone through their evidence, I am inclined to accept the respondent's version that on 5th February, 1967, he was out of Delhi. The allegation of the petitioners as to the distribution of Annexure 'C' must, therefore, fail on two grounds—

- (1) They have failed to prove that the respondent was, in any way, connected with the publication of this calendar, on the strength of their evidence; and
- (2) the respondent has been able to establish that he was out of Delhi on February 5, 1967.

The next corrupt practice alleged is the distribution in the area of Chhota Chippiwara of handbills similar to Annexure 'D' in a public meeting dated 11th February, 1967, in the presence of the respondent. This allegation is the subject-matter of issues Nos. 3 and 4, which are as under :—

- "3. Whether handbills similar to Annexure 'D' to the petition were distributed in a meeting in Chhota Chippiwara on 11th February, 1967, in the presence of respondent No. 1 ?

4. If issue No. 3 be found in favour of the petitioners, whether the distribution of the aforesaid handbills constitutes corrupt practice?"?

The respondent's case is that there was a meeting in Chhota Chippiwara from 4 to 6 P.M. and the respondent addressed the same from 5-30 P.M. to 6-00 P.M. According to the petitioners, however, the meeting was held between 8-00 P.M. and 10 P.M. On the face of the handbill it appears—

"Circulated by Prof. Pradhan,
Genl. Secy."

The handbill emphasises the sanctity of cow and condemns the Congress for being in favour of cow slaughter. Mr. Rameshwar Dial concedes that if this handbill be construed to mean only an appeal not to vote for the Congress because they are in favour of cow slaughter then the handbill will not offend section 123 of the Act. He, however, suggests that this was an appeal not to vote for Sham Nath, a person belonging to the Congress Party, which favours cow slaughter. I will deal with this aspect of the matter after dealing with the evidence on the subject. The evidence of the distribution consists of Sunder Singh (P.W. 40), Mukh Nath Rahi (P.W. 41) Dwarka Nath (P.W. 54) and Sham Nath (P.W. 56)—Sunder Singh (P.W. 40) said that the respondent addressed the said meeting and the handbill was distributed thereat. The witness did not get the handbill but he only saw it being distributed. Mr. Marwah points out that Sunder Singh was an interested witness because Hem Chand petitioner was a friend of one Mr. Gajjalani, the President of Pure Products Cooperative Store, of which the witness was the secretary. That apart, the statement of the witness does not, in any way, connect the respondent. If the respondent is addressing a meeting and some handbills are distributed, assuming that they were distributed, it is not impossible that that may have been distributed on behalf of the candidates other than the respondent without even the latter's knowledge. From the evidence of the petitioners, even if it be accepted, it does not appear that the respondent spent any time amongst the crowd and if he went straight to the dias it is quite likely he may not know what was being distributed to the audience. This witness does not say that the respondent made any mention of this handbill in the speech. He was not able to give the name of any other person present in the meeting except that of Ramesh Jain. The witness stated that he attended this meeting probably on 10th or 11th of February, 1967. He was, however, unable to say whether this meeting took place after the meeting in Gandhi Ground addressed by Prime Minister, though he claimed to have attended the Gandhi Ground meeting as well. It is established from the evidence of Sham Nath (P.W. 56) that the Gandhi Ground meeting addressed by the Prime Minister took place on 6th February, 1967. The time of the meeting has also not been given by this witness. Mukh Nath Rahi (P.W. 41) also claimed to have attended the meeting and seen the distribution of pamphlets by workers of Jan Sangh wearing saffron caps. The witness further said that the respondent in his speech referred to the pamphlet and said that the number of cows slaughtered had been given therein. It is significant that Sunder Singh (P.W. 40) did not say that the pamphlets were being distributed by persons wearing saffron caps, and, if that were so, I see no reason why the other witnesses should not have mentioned that fact which was of importance in connecting Jan Sangh with the distribution. He also admitted that he was working for Sham Nath. He stayed in the meeting only for 15 minutes. The witness was not able to give the date of the meeting but only said that it was 9 or 10 days before the polling. He was also unable to say whether this meeting took place before or after the Gandhi Ground meeting although he claimed to have attended the meeting in Gandhi Ground. He was not able to give either the dates of the Congress meetings in his locality or even the names of the persons who spoke thereat. He also did not give the time of the meeting. Dwarka Nath (P.W. 54) said that on the day the respondent was going to address the meeting this witness met him near Bar Shahbula. When he (the respondent) alighted from a taxi one of the companions of the respondent was carrying a bundle of pamphlets and that the witness asked for a copy of the pamphlet which the respondent gave him. The pamphlet was identified by the witness as one similar to Annexure 'D'. This witness was working for about 8 to 10 years with Sri Nath, a relation of Sham Nath. He did not talk about this pamphlet to Sham Nath. He, however, said that Kanahya Lal and Fateh Singh met him at a betel shop next morning and snatched the pamphlet from him. The story put forth by this witness is full of improbabilities. For instance—

- (1) there could have been no occasion, when the respondent met the witness, to abruptly ask for a copy of the pamphlet;
- (2) it is improbable that the respondent would be carrying such like pamphlets with him when going to address a meeting; and
- (3) the way the witness described the snatching of the pamphlet by Kanahya Lal and Fateh Singh is unbelievable. It is not very likely that early morning he would go to a betel shop carrying the pamphlet with him.

So far as Sham Nath (P.W. 56) is concerned, he said that a pamphlet like Annexure 'D' was brought to him in the first week of February, 1967, by Krishan Khanna, a Congress nominee for the Corporation seat. That would be before 11th February, 1967, and, therefore, cannot have any connection with the distribution. The respondent examined Krishan Lal (R.W. 16) and Jambu Pershad (R.W. 26) besides his own statement. These witnesses stated that the meeting

was held between 4-00 to 6-00 P.M. and the respondent addressed the meeting at about 5-30 P.M. In view of the fact that I am not inclined to place much reliance on the petitioners' evidence, it is unnecessary to discuss the respondent's evidence in this behalf.

So far as the contents of Annexure 'D' are concerned, it is unnecessary to decide whether the same offend section 123 of the Act, but I may just briefly mention that the handbill is nothing more than describing the cow as sacred and condemning the Congress for being in favour of cow slaughter. Read as a whole the handbill amounts to nothing more than saying that the people should not vote for the Congress and that constitutes only a criticism of the Congress' pro-cow slaughter policy.

In view of the above discussion, issues Nos. 3 and 4 are decided against the petitioners and in favour of the respondent.

That takes me to Annexure 'E', Exhibit P.W. 52/1, which is the subject-matter of issues Nos 5, 6 and 7, which are as under:—

- “5. Whether handbills similar to Annexure 'E' were distributed in a meeting held in Katra Khushal Rai on 10th February, 1967, in the presence and with the consent of respondent No. 1 ?
- 6. In case issue No. 5 be decided in favour of the petitioners, whether the distribution of handbills similar to Annexure 'E' constitutes corrupt practice ?
- 7. Whether respondent No. 1 addressed the meeting referred to in issue No. 5 in the same strain as the contents of the handbill Annexure 'E' to the petitioner ? if so, what is the effect thereof ?”

This handbill says that one can earn “Pun” or sin by the correct use of his vote. I fail to see how can it be even remotely suggested to offend section 123 of the Act. All that the pamphlet says is that if one exercises the vote properly, he is likely to earn “Pun”. Regarding its distribution, the allegation of the petitioners is that it was distributed in a public meeting in Katra Khushal Rai on February 10, 1967, at about 8-00 P.M. and the respondent addressed that meeting and referred to the handbill. The allegation is that the handbill was lying on the dais, was taken from there and then distributed at the meeting. The respondent's case, however, is that he did not address any meeting in Katra Khushal Rai on 10th February, 1967, as he was stuck at the meeting in Jama Masjid area. The respondents' case further is that one Om Prakash son of Dr. Girdhari Lal Dhalia (R.W. 7) had spoken against the respondent and the respondent was itching to give a reply to the allegations. On 10th February, 1967, there was a meeting by Jan Sangh in Jama Masjid area and the respondent took that opportunity to reply to Om Prakash's allegations and was, therefore, speaking there till about 11-00 P.M. The petitioner's evidence consists of Khairati Lal (P.W. 52), Ram Chander Bhansoli (P.W. 53), Rati Ram (P.W. 55) and Sham Nath (P.W. 56). Khairati Lal (P.W. 52) was present in the meeting for sometime and saw the handbills stocked at the dais. and the workers distributing the same. According to this witness, the respondent referred to the handbill as the gist of his speech. This witness, however, left the meeting before the respondent concluded his speech. According to this witness, the respondent came to the meeting after the witness had reached there at about 9-45 or 10-00 P.M. This is the only meeting alleged to have been attended by this witness and that also as a matter of chance. According to the evidence of Sham Nath (P.W. 56), Khairati Lal (P.W. 52) used to accompany him in Sham Nath's rounds during the elections. He was also the proposer of Ram Chander Aggarwal. He would naturally, therefore, be interested in Sham Nath and the petitioners' success. I may say again that it is difficult for me to accept that the respondent, fighting election to the Lok Sabha, would permit offending pamphlets to be distributed openly in public meetings and thereby create evidence against himself. It may be possible that some times even very experienced persons may commit such like mistakes, but, having regard to the nature of the evidence led by the petitioners, I am convinced that the respondent was not a party to the distribution of Annexure 'E' as well. K. Narindra (R.W. 10) appeared as a witness, and, as I have already said I see no reason to disbelieve him. He also addressed the Jama Masjid meeting on that day and left for Katra Khushal Rai to address the meeting there at about 10-00 P.M. leaving the respondent in the Jama Masjid meeting. He then addressed the Katra Khushal Rai meeting till its conclusion and, according to this witness, the respondent never addressed that meeting. So far as the evidence of Ram Chander Bhansoli (P.W. 53) is concerned, he is alleged to have attended a meeting 8 or 9 days before the polling, which was addressed by the respondent and in that meeting the respondent said that those who did not make proper use of their votes were sinners. This witness did not see the handbill being taken from the dais and saw only the distribution thereof. He is also a chance witness as he was going to see his brother there and incidentally stopped at the meeting. He stated that he knew the respondent because he had purchased a shawl from his Kinari Bazar shop. Dwarka Nath (P.W. 54), however, said that the respondent never had a shop in Kinari Bazar but his shop was in Moti Bazar. The witness is admittedly pro-congress. Rati Ram (P.W. 55) also saw only the distribution of the handbills like Annexure 'E' but did not see their being taken from the dais. This witness's statement also does not show that the respondent was, in any way, connected therewith. As I have said earlier, even if some literature is distributed, it does not necessarily lead to the conclusion that it was done with the complicity of the respondent. The witness was

mittedly a member of the Congress and an office-bearer of District Congress Committee. He as a polling agent of Sham Nath and this was the only meeting alleged to have been attended by him. Sham Nath (P.W. 56) merely said that a handbill like Annexure 'E' was shown to him. He, however, stated that he had occasions to pass once or twice from the meetings of Jan Sangh addressed by the respondent and in none of those meetings he saw any handbill or pamphlet being distributed. The respondent also stated that he did not attend this meeting. Moreover, once the evidence of K. Narindra (R.W. 10) is accepted, then the respondent's evidence has necessarily to be accepted on this controversy. There are several other witnesses produced by the respondent to prove that the respondent did not attend this meeting but it is unnecessary to refer to their testimony in detail.

In view of the above, issue Nos. 5, 6 and 7 are decided against the petitioners.

I will now deal with Annexure 'F' poster, and Annexure 'G', a handbill. These are the subject matter of issues Nos. 8 and 9, which are as under :—

- “8. Whether respondent No. 1 got pasted posters similar to Annexure 'F' to the petition, and got distributed handbills similar to Annexure 'G' to the petition on 18th February, 1967 at different places in Muslim areas of Chandni Chowk Constituency as alleged in the petition ?
9. Whether the above poster and handbill contained statements of facts which were false and which respondent No. 1 believed to be false or did not believe to be true in relation to the personal character and conduct of Shri Sham Nath as alleged in the petition, and as such respondent No. 1, was guilty of corrupt practice ?”

The petitioners' evidence regarding the publication of these Annexures consists of Mohd. Laiq (P.W. 3), Abdul Ghaffar (P.W. 15), Mohd. Kalim Siddiqi (P.W. 20), A.M. Zutshi (P.W. 45), Mohd. Musthassan Farooqi (P.W. 7), Asfar Bijnori (P.W. 8), Aziz Ahmad Warst (P.W. 9), Abdul Aziz (P.W. 11), Naz Ansari (P.W. 18), Shamim Ahmad (P.W. 29), Abdul Wahid (P.W. 30), Chaman Lal Batra (P.W. 46), Shanti Parkash (P.W. 13), Kartar Singh (P.W. 14) and Sham Nath (P.W. 56). Mohd. Laiq (P.W. 3) claimed to be the printer of Annexures 'F' and 'G'. He stated that one thousand copies each of 'F' and 'G' were printed at Khwaja Press on 18th February, 1967, which press is on lease with the witness. According to this witness, the respondent came and assured him that the pamphlet and the poster were of the respondent and that he would be responsible for the printing thereof. The said Annexures purport to have been issued by one Arshad Hussain, 1391, Pahari Imli, Delhi-6, and they contain three questions addressed to Sham Nath. The petitioners summoned Arshad Hussain but the report was that there was no such person at that address. According to Mohd. Laiq (P.W. 3), the manuscript of these Annexures was given to him by one Rashid Hussain, Calligraphist. However, the original manuscript has not been produced. The witness admitted that he issued no receipt to Rashid Hussain, the Calligraphist, for payment. It is difficult to place reliance on this type of evidence so far as the complicity of the respondent goes. Abdul Ghaffar (P.W. 15) claimed to be the distributor of the handbill Annexure 'G'. He said that the handbill was given to him by Mohd. Kalim Siddiqi (P.W. 20) and he got payment of Rs. 50/- from the respondent one day after the polling. This sum of Rs. 50/- the witness claimed to have shared with his three other companions—Khalid Mohd. Shamim Siddiqi (P.W. 19), Mohd. Idris (P.W. 26) and Mohd. Bilal (P.W. 27). That shows that the distribution work must have been done by those four persons together yet Khalid Mohd. Shamim Siddiqi (P.W. 19), Mohd. Idris (P.W. 26), and Mohd. Bilal (P.W. 27) did not speak about having done any distribution work in connection with these Annexures. The evidence of this witness is said to be corroborated by A.M. Zutshi (P.W. 45) who saw the handbill being distributed on the 17th or 18th of February, 1967. This witness (P.W. 15) stated that he got payment from the respondent from Chira Khana. There is abundant evidence that the respondent had neither any election office in Chira Khana nor he was residing there. From the evidence of the respondent I am convinced that the respondent was residing in his Krishan Nagar House. That evidence is corroborated by the fact that he had a telephone installed in his residence in Krishan Nagar for nearly 3 to 3-1/2 years. The witness further stated that he got payment after he showed Ali Bahadur's chit to the respondent. It is not the case of the witness that the chit was handed over to the respondent and yet that chit had not been produced. Abdul Aziz (P.W. 11), Mohd. Musthassan Farooqi (P.W. 7) and Bahar Barni (P.W. 48) are alleged to have seen handbills like Annexure 'G' two or three days before the polling. That throws a very dark cloud on the testimony of the witnesses. The documents were, according to the petitioner's own evidence, printed on 18th February, 1967, and distributed on that very day. Mohd. Kalim Siddiqi (P.W. 20) claimed to be the poster of the poster Annexure 'F'. This witness said that he was pasting such like posters for a number of candidates, including Bahar Barni. He further stated that he used to go to the respondent's house in Chira Khana and receive payment. I have already held that the respondent had neither his election office nor his residence in the Chira Khana House. That casts a great doubt on the testimony of the witness. Moreover, in the petition it is alleged that Annexures 'F' and 'G' were pasted and/or distributed at 5.00 P.M., while, according to Mohd. Kalim Siddiqi (P.W. 20), he got the poster from Rashid Hussain, Calligraphist, at sunset. If that be so, it is difficult to accept that it could have been distributed at 5.00 P.M.

These Annexures appeal to the voters to vote for Hafiz Ali Bahadur. I have already held that Hafiz Ali Bahadur was ~~scri~~ ^{scri} : contesting the election. That factor alone discredits the

evidence of the petitioners as it is impossible to accept that the respondent would be a party to the distribution or pasting of the election literature supporting one of his rival candidates. The evidence of the other witnesses does not, in any way, connect the respondent and, therefore, it is unnecessary to discuss the same. It is also unnecessary, therefore, to pronounce on the contention of Mr. Marwah that the statements of facts contained in these Annexures are correct.

In view of the above, issues Nos. 8 and 9 are also decided against the petitioners.

That then takes me to Annexures 'J' and 'M'. They are the subject-matter of issues Nos. 12, 13, 18 and 19, which are as under :—

- "12. Whether respondent No. 1 got distributed handbills similar to Annexure 'J' to the petition in the areas of Matia Mahal and Suiwalan on 10th February, 1967 as alleged in the petition ?
- 13. In case issue No. 12 be found in favour of the petitioners, whether the distribution of handbills similar to Annexure 'J' constitutes corrupt practice ?
- "18. Whether respondent No. 1 arranged for the pasting and display of posters similar to Annexure 'M' in Urdu Bazar on 7th February, 1967 and in Ballimaran, Farash Khana, Jama Masjid, Matia Mahal, Suiwalan, Pahari Bhojla and Phatak Telian on 7th and 8th February, 1967 as alleged in the petition ?
- 19. In case issue No. 18 be decided in favour of the petitioners, whether the pasting and display of posters similar to Annexure 'M' constitutes corrupt practice ?"

Annexure 'J' is a handbill alleged to have been distributed on 10th February, 1967, in the areas of Matia Mahal and Suiwalan, while Annexure 'M' is a poster alleged to have been pasted and displayed on 7th and 8th February, 1967, in the areas of Ballimaran, Farash Khana, Jama Masjid and some other localities. The subject-matter of both these Annexures is the same and purport to have been issued by Ali Bahadur. They highlight the difficulties that public, and particularly the Muslim public, had to undergo during the Congress regime. At the end it is said that if the voters elected Ali Bahadur he would direct his attention in Parliament on the points mentioned in the pamphlet. Even if it be held that the handbill, Annexure 'J', constitutes an appeal in the name of religion of a candidate, it is an appeal on behalf of Ali Bahadur and, therefore, cannot offend section 123 of the Act so far as the respondent is concerned. I am not prepared to accept that the respondent, in any way, conspired in the display and distribution of these pamphlets and posters which make an appeal to vote for Ali Bahadur. Mr. Rameshwar Dial says that since this was distributed with the complicity of the respondent it must be held to be an appeal to the voters made by the respondent not to vote for Sham Nath, who was the Congress nominee as the Congress had brought miseries to the Muslims. It is difficult for me to read it in that way. As I have already said, there is no appeal in this handbill on behalf of the respondent to vote for the respondent, or not to vote for Sham Nath. This handbill does not, in my opinion, offend section 123 of the Act. Again, before discussing the evidence about its distribution, I may say that it is unimaginable that the respondent would be a party in the distribution of such literature which appeals to the voters to vote for the respondent's rival candidate, and I would, therefore, examine the evidence in the light of this observation.

The witnesses about Annexure 'J' are Abdul Ghaffar (P.W. 15), Mohd. Idris (P.W. 26), Mohd. Bilal (P.W. 27), Afsar Bijnori (P.W. 8), Abdul Wahid (P.W. 30), Chaman Lal Batra (P.W. 46) and Sham Nath (P.W. 56), while regarding Annexure 'M' the witnesses are Mohd. Kalim Siddiqi (P.W. 20), Anis Ahmad (P.W. 21), Afsar Bijnori (P.W. 8), Aziz Ahmad Warsi (P.W. 9), Chaman Lal Batra (P.W. 46) and Sham Nath (P.W. 56). Abdul Ghaffar (P.W. 15) claimed to have distributed several Annexures on behalf of Hafiz Ali Bahadur but he did not refer specifically to Annexure 'J'. The evidence of this witness, therefore, is of no avail to the petitioners. I have had already an occasion to discuss his evidence in connection with Annexure 'G'. Mohd. Idris (P.W. 26) claimed to have distributed handbills like Annexure 'J' which he got from Gaffar Khan. He does not refer to the respondent at all or connect him with the distribution. Moreover, this witness is alleged to have distributed handbills two or three days before the polling. Similarly, Mohd. Bilal (P.W. 27) does not connect the respondent. It is, therefore, not necessary to consider in detail the evidence of these witnesses. Similarly, Afsar Bijnori (P.W. 8), Chaman Lal Batra (P.W. 46) and Sham Nath (P.W. 56) alleged to have only seen the handbill but that does not connect the respondent with its distribution. It must, therefore, be held that the petitioners have failed to prove that the respondent had anything to do with the distribution thereof. Mohd. Kalim Siddiqi (P.W. 20) said that the respondent gave the poster to him. According to this witness, the respondent was living in Gali Matawali, Chira Khana; which fact is not correct. Moreover, I do not understand why the respondent would give the poster to be displayed in favour of his rival candidate. Anis Ahmad (P.W. 21) does not connect the respondent nor do the other witnesses of the petitioners mentioned above, who merely saw the poster being displayed.

Accordingly, issues Nos. 12, 13, 18 and 19 are also decided against the petitioners.

The next allegation of the petitioners is regarding the distribution of Annexure 'K', which again purports to have been issued by Hafiz Ali Bahadur. This Annexure is the subject-matter of issues Nos. 14 and 15 which are as under :—

"14. Whether respondent No. 1 got distributed handbills similar to Annexure 'K' in Mohalla Rohadgaran on 15th February, 1967 as alleged in the petition ?

15. In case issue No. 14 be decided in favour of the petitioners, whether the distribution of the handbills similar to Annexure 'K' constitutes corrupt practice ?"

Evidence regarding this consists of Khwaja Zaki Ahmad (P.W. 10), who does not connect the respondent with the handbill at all, Azhar Hussain (P.W. 44), Abdul Ghaffar (P.W. 15), Khalid Mohd. Shamim Siddiqi (P.W. 19), Mohd. Bilal (P.W. 27), Afzal Bijorai (P.W. 8), Shamim Ahmad (P.W. 29), Abdul Wahid (P.W. 30), and Chaman Lal Batra (P.W. 46). The last named four witnesses spoke only about the fact of their having seen handbills like Annexure 'K'. If, therefore, complicity of the respondent is otherwise not established, the evidence of these witnesses will have no value. Regarding the distribution, Abdul Ghaffar (P.W. 15), Khalid Mohd. Shamim Siddiqi (P.W. 19) and Mohd. Bilal (P.W. 27) do not connect the respondent with the distribution. The only witness who connects the respondent with the distribution of the handbill is Azhar Hussain (P.W. 44). I must frankly confess that this witness did not impress me at all. He said that he used to work during the day in Union Printing Press, at night in Khanna Litho Press, and in spare time used to secure orders for printing in the name of Rahi Printing Agents. He said that he knows Ram Gopal respondent and met him 10 to 15 days before the polling date at the house of Hafiz Ali Bahadur; that Hafiz Ali Bahadur had called him to his house and wanted him to do some printing work; that he insisted on payment in advance; and that the respondent then said that the payment would be made in advance. According to this witness, the respondent gave him the pamphlet for printing and although the printing charges came to Rs. 40/-, the respondent paid him Rs. 100/- and said that the balance could be adjusted against future work. I cannot accept that the respondent would have paid him Rs. 100/- when the charges for the work entrusted came to Rs. 40/-, particularly when they were practically strangers to each other. The witness also said that he got the handbill printed and purchased the paper himself. No cash memo, regarding the purchase of the paper was produced nor could the witness give the name of the shop from which he purchased the paper. That apart, the whole story disclosed by the witness appears to be most unbelievable. Once the evidence of Azhar Hussain (P.W. 44) is disbelieved, the other witnesses lose all importance as none of them connect the respondent. It is, therefore, unnecessary to decide whether Annexure 'K' offends section 123 of the Act or not.

Issues Nos. 14 and 15 are, therefore, decided against the petitioners.

Then remains only Annexure 'L', which is a poster purporting to have been issued by Hafiz Ali Bahadur. This Annexure is the subject-matter of issues Nos. 16 and 17, which are as under :—

"16. Whether respondent No. 1 got pasted posters similar to Annexure 'L' in Matia Mahal on 2nd February, 1967 as alleged in the petition ?

17. In case issue No. 16 be decided in favour of the petitioners, whether the pasting of the above posters constitutes corrupt practice ?"

The evidence about this poster also consists of Mohd. Kalim Siddiqi (P.W. 20), who claims to have pasted this poster and received Rs. 25/- from the respondent. The other witnesses are either expert witnesses as to the meanings of certain expressions appearing in the poster or witnesses who saw the poster displayed. Mohd. Kalim Siddiqi (P.W. 20) is the same person, whose evidence I discussed when dealing with Annexure 'F' and 'G'. This witness also received Rs. 25/- from the respondent in his Chira Khana House, though, as I have said earlier, the respondent was not residing there. Again, the remarks that I have made regarding the distribution of other handbills or display of posters supporting Ali Bahadur and the alleged complicity of the respondent therewith apply with equal force to this poster as well, which is an appeal to the voters to vote for Ali Bahadur.

Once other comment which I would like to make is that a finding of corrupt practice by distribution or display of pamphlets and posters is difficult to be based upon such witnesses as it is not difficult to procure witnesses in this behalf. The elected candidate represents the will of the Majority of the electorate in his area and the election can be set aside on the ground of corrupt practices only if the petitioner proves beyond reasonable doubt that the respondent had been guilty thereof. This principle, however, cannot be carried very far as a person who gets elected by fraud or corrupt practice does not acquire any right to the seat claimed by him. I do not feel inclined to place implicit faith on the evidence of the witnesses like Mohd. Kalim Siddiqi (P.W. 20) and Abdul Ghaffar (P.W. 15) who claimed to have distributed or pasted the election literature, to such an extent that I should base a finding of corrupt practices against the respondent.

I may point out one more fact that originally the petition was filed against the respondent and Hafiz Ali Bahadur but Hafiz Ali Bahadur having died during the pendency of the petition, his name was dropped.

There is still an application to be dealt with which the petitioners made, being O.M. No. 605 of 1968, under Order 16 and section 151 Civil Procedure Code, for summoning some additional evidence. A reply to this application was filed but at no stage, not even till the conclusion of the arguments, did the learned counsel for the petitioners press for this application. This application is also, therefore dismissed.

In the result, the petition fails and is dismissed with costs. I fix the counsel's fee at Rs. 1500.

The decision in this petition be communicated by the Registrar to the Election Commission and to the Speaker of the Lok Sabha as provided in section 103 of the Representation of People Act, 1951.

March 22, 1968.

[No. 82/1 of 67/DL/68.]

ORDERS

New Delhi, the 19th July 1968

S.O. 2893.—Whereas the Election Commission is satisfied that Shri Ramji Lal, Village and Post Office Sawled via Singhana, District Jhunjhunu, Rajasthan, a contesting candidate for election to the House of the People from Jhunjhunu constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, after considering the representation made by the said candidate, the Election Commission is further satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ramji Lal to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-HP/3/67(5).]

New Delhi, the 19th July 1968

S.O. 2894.—Whereas the Election Commission is satisfied that Shrimati Sumitra C/o Mali Ram, Tola Pujario Ka Mohalla, Chirawa (Rajasthan), a contesting candidate for election to the House of the People from Jhunjhunu constituency, has failed to lodge an account of her election expenses in the manner required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, after considering the representation made by the said candidate, the Election Commission is further satisfied that she has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shrimati Sumitra to be disqualified for being chosen, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-HP/3/67(6).]

New Delhi, the 5th August 1968

S.O. 2895.—Whereas the Election Commission is satisfied that Maharaj Kumar Vishwanath Singh, Naya Bhojpur (Dumraon), District Shahabad (Bihar) a contesting candidate for election to the House of the People from Chapra constituency, has failed to lodge an account of his election expenses in the manner required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, after considering the representation made by the said candidate, the Election Commission is further satisfied that he has no good reason of justification for the failure.

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Maharaj Kumar Vishwanath Singh to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-HP/6/67(44).]

By Order,

A. N. SEN, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 8th August 1968

S.O. 2896.—Whereas the Central Government, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared on the 16th January, 1968, the Mizo National Front to be an unlawful association;

And whereas the Central Government, in exercise of the powers conferred by sub-section (1) of Section 5 of the said Act, constituted on the 12th February, 1968, the Unlawful Activities (Prevention) Tribunal, consisting of Shri Justice P. K. Goswami, Judge of the High Court of Assam and Nagaland;

And whereas the Central Government, in exercise of the powers conferred by sub-section (1) of Section 4 of the said Act, referred the issue of the declaration of the Mizo National Front as an unlawful association to the said Tribunal on the 15th February, 1968, for the purpose of adjudicating whether or not there was sufficient cause for making the aforesaid declaration;

And whereas the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an Order on the 11th July, 1968;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said Order of the said Tribunal, namely:—

ORDER

BEFORE THE UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL AT GAUHATI

Reference under Section 4 of the Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).

In re: Mizo National Front

PRESENT:

The Hon'ble Mr. Justice P. K. Goswami, Tribunal.

For the Mizo National Front—None appears.

For the Government of India—Mr. G. K. Talukdar, Sr. Government Advocate.

Date of hearing—The 10th July, 1968.

Date of Order—The 11th July, 1968.

ORDER

This is a reference to this Tribunal under Section 4(1) of the Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), made by the Central Government, referring the Notification No. S.O. 311 dated New Delhi, the 16th January, 1968 for the purpose of adjudication whether or not there was sufficient cause for declaring the Mizo National Front, hereinafter referred to as 'the Front', as an unlawful association.

2. This notification was received by the Tribunal on 15th February, 1968, which is within thirty days from the date of the publication of the notification. The Tribunal issued notice to the Front and the same was served and made known to the Front by various modes as required under the Law. I am satisfied that the notice has been properly served and circulated and the date of service for the present purpose may be held to be 30th March, 1968, and 31st March and 1st April, 1968 when the same was announced over the Radio in the Mizo Programme and lastly on 5th May, 1968, the date of the intimation of the service report by the Deputy Commissioner, Mizo District. The

matter was fixed for hearing on 8th July, 1968 after giving due notice to the parties. The Government of India is represented by the Senior Government Advocate, who has presented an affidavit sworn by the Deputy Secretary, Government of Assam, Home and Political Department, who is conversant with the facts and circumstances of the case. None appears to oppose this reference. Neither has any cause been shown.

3. The procedure in this reference is as laid down under section 9 of the Unlawful Activities (Prevention) Act, 1967, hereinafter referred to as 'the Act', and that is the procedure provided for in the Code of Civil Procedure for investigation of claims. This Tribunal shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XXXV of the Code of Criminal Procedure and any proceeding before it shall be deemed to be a judicial proceeding. Under Section 5(6) of the Act, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters enumerated in that section and one of the matters is the reception of evidence on affidavits under section 5(6)(c). Under Rule 3 of the Unlawful Activities (Prevention) Rules, 1963, made under the Act, the Tribunal shall subject to the provisions of sub-rule (2), follow as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (I of 1872). Under Rule 5, the reference made to the Tribunal has to be accompanied by a copy of the notification and all the facts on which the grounds specified in the said notification are based, subject to a right given under this rule to the Central Government not to disclose any fact to the Tribunal which that Government considers against the public interest to disclose. The notification dated 16th January, 1968 is in the following terms:

"S.O. 311.—Whereas the Mizo National Front (hereinafter referred to as the Front)—

- (i) has openly declared as its objective the formation of an independent Mizoram State comprising of the Mizo District of Assam and the adjacent Mizo and Kuki-inhabited areas of Manipur and Tripura;
- (ii) has raised an armed force (hereinafter referred to as the armed force) and set up an organisation to achieve this objective and to bring about the secession of the said district and areas from the Union of India; and
- (iii) is, in furtherance of its objective, employing the armed force in attacking the Security Civil Forces, the Government, and the citizens in Mizo and Cachar Districts of Assam, Manipur and Tripura, and indulging in acts of arson, looting and intimidation against the civilian population; And whereas the Central Government is of opinion that for the reasons aforesaid, the Front is an unlawful association;

And whereas the Central Government is further of opinion that because of the repeated acts of violence and attacks on security forces and on civilian population by the armed force, it is necessary to declare the Front to be unlawful with immediate effect.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Mizo National Front to be an unlawful association and in exercise of the powers conferred by the proviso to sub-section (3) of that section directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

4. As noticed earlier, this notification containing grounds for declaring the Front as an unlawful association, is accompanied by an enumeration of the material facts on which the grounds are sought to be based. An affidavit has been made by the Deputy Secretary to the Government of Assam (Home and Political Department) who is authorised by the Government of India in that behalf, swearing to the correctness of the facts and informations which appear in the documents accompanying the reference. In addition to this, the learned Senior Government Advocate relies upon a letter dated 22nd April, 1968, addressed by Sri Lalchungnunga, self styled Deputy Commissioner of the underground Government of Mizoram, to the Additional Deputy Commissioner, Aijal, which goes to support the contention of the Central Government that the objects of the Front are as alleged by it.

5. I have perused all the papers accompanying the reference and I find from Annexure T that 42 persons mentioned therein made a declaration of independence completely seceding from India and declaring their resolve to overthrow the Indian Administration. The material portion of the declaration is couched in the following words:

"We, the undermentioned, in a meeting, on behalf of the Mizo people, before the Light of the world, with a view to accomplish our objective and in the name of the people of our country and by their consent, verily, on this first day

of March, of the year of our Lord, 1966, declare that Mizoram by virtue of her rightful claim, should be independent. All their political relations with the Government of India have now been shaken off; and the authority over war matters, making of peace, relations with foreign countries, trade and commerce with foreign countries and all others which an independent State has."

In view of this resolution, it appears, the Government of India had to take necessary steps under the Defence of India Rules, 1962 and on 6th March, 1966 passed orders directing that Rule 32 of the Defence of India Rules shall apply to the organisation described as Mizo National Front. It also appears that in pursuance of their resolve to secede from India and become an independent State, they have established an underground Government by the name of Mizoram and were actually running parallel Government Departments and using all kinds of oppressive measures and tactics in order to compel obedience from the loyal Mizos. They have established connection with foreign Governments inimically disposed towards India and are having their volunteers trained there with the avowed object of fighting the security forces of the Government of India which are engaged in maintenance of law and order in this part of the country. Even arms have been imported from the neighbouring foreign countries. With all this resolve and activity, the Mizo National Front, which actually started as a political party in September, 1960, took it to their heads on the night of February 28/ March 1, 1966 to employ their armed volunteers to simultaneously raid Government offices, Telephone exchanges, Police stations, Treasuries and Security Forces Posts at a number of places in the district. They succeeded in disrupting the Silchar-Aijal Road and the telephone connections at Aijal. They also attacked the Aijal Treasury and decamped with cash amounting to Rs. 10,000 besides arms and ammunition. At Lungleh, about 500—1000 volunteers raided the Treasury, looted cash worth over 12 lakhs and killed one Sentry and two other ranks and injured three. The raiders also over-ran the Border Security Post at Lungleh and disrupted the telephone communications. The rebels also attacked the residence of the Local Subdivisional Officer and kidnapped him. The Subdivisional Officer was taken to Pakistan and kept as a hostage. Of these hostages, 41 of the kidnapped Government servants were released in the middle of May. The Security Forces at Chawngte, Champhai and Tuinang were also attacked. On the morning of March 1, a post of Assam Rifles at Chirnlung was attacked. Some Police Stations and Post Offices in the interior were also raided. The raiders took charge of the Police Station at Kolosib, and the Silchar-Aijal Road was disrupted by the blowing up of two culverts, dislocating one bridge and creating road blocks. 2 rifles were looted from Demagiri Police Station on March 3. A number of persons belonging to the Assam Police and Government Intelligence Posts at Demagiri were captured. On March, 7, Sri Lanunmawia, the Vice President of the Front, sent a letter to the Deputy Commissioner, Aijal, blaming the Government for provoking the violent movement and offering to hold peace talks. The Deputy Commissioner sternly rejected this suggestion and asked the Front volunteers to surrender to the Government. This, however, was not complied with. The Army moved into the district on March 3, in aid of the Civil authority. It cleared the Silchar-Aijal road and relieved Kolosib on March 4, and Aijal town on March, 5. Lungleh and Champhai were relieved on March, 13 and Demagiri on March, 17. Mopping up operations were taken up and the rebels were put to flight. Ever since the rebels have been indulging in sniping, raids and ambushes at various places besides other terrorist and secessionist activities, and there has been no change in their stand. As already noticed, the Front's civil set up is functioning under the title of Government of Mizoram. There are various departments functioning and self styled Chief Commissioner, Commander-in-Chief are operating. There is also a National Refinement Court. The Front Volunteer Corps of about 8000 was converted into Mizo National Army, which is modelled on the British pattern from the rank of a private to the Commander-in-Chief. A full-fledged Army Headquarter of the Front National Army has been constituted. There is also a Front Parliament which met at Maite in the last week of May 1966 and decided to introduce its own currency by Stamping the Indian currency with the Front Seal. It was declared that Indian currency notes without the Front seal would not be regarded as legal tender and all villagers would be required to produce the Indian currency notes before the Front authorities for affixing the seal. It was stated that any person using Indian currency without the Front seal could not be considered loyal to the Mizoram independence movement. It also appears that there has been close liaison of the Front rebels with the Naga undergrounds, Paite and Kukis of Manipur.

6. In Annexure 'P' accompanying the reference, the illegal activities have been enumerated and it shows that there has been regular attack and counter attack and arms, detonators and various documents showing the designs of the Front, have been seized. The activities of the Front have escalated to some parts of Tripura, Cochiar District and Manipur. Since the rebellion in March, 1966, there were more than 300 encounters with the Security Forces and 271 robberies and raids in villages by the volunteers, more than

300 cases of kidnapping by them and 83 murders committed by the men organised by this Front. All these facts which are disclosed in the documents accompanying the reference, most of which have been sworn to in the affidavit of the Deputy Secretary, clearly establish the existence of the grounds on which the order in the notification has been based. As has been rightly contended by the learned Senior Government Advocate, the stand, which appears in these documents, has not been disowned in the letter which has been addressed by the self-styled Deputy Commissioner to the Additional Deputy Commissioner, Aijal.

7. Apart from the affidavit, the Tribunal can also take judicial notice of the hostilities going on in that area under Section 57(1) of the Indian Evidence Act, which is applicable for adjudicating a reference of this nature, and may be set out:

"57. The Court shall take judicial notice of the following facts:—

* * *

(1) The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons:

* * *

In this connection it may be appropriate to refer to a decision in the matter of a Petition of Right, reported in 1915(3) King's Bench Division, 649 at page 658, where the following passage occurs:

"The Court will take judicial notice that this country is in a state of war, that its coasts have been attacked by Zeppelins and other aircraft, and, further, that certain places on the east coast have been subjected to attack by the enemy's fleet. In these circumstances the naval and military authorities have to a very great extent exercised the rights they now claim."

There is another decision reported in 1916(1) King's Bench Division, 268 at pages 274-75, and the following passage is apposite:

"I think, however, that the Courts are entitled to take judicial notice of certain notorious facts which may be summarized thus: There are a large number of German subjects in this country. This war is not being carried on by naval and military forces only. Reports, rumours, intrigues play a large part, methods of communication with the enemy have been entirely altered and largely used. I need only refer to wireless telegraphy, signalling by lights, and the employment on a scale hitherto unknown of carrier pigeons. Spying has become the hall-mark of German "kultur". In these circumstances a German civilian in this country may be a danger in promoting unrest, suspicion, doubts of victory, in communicating intelligence, in assisting in the movements of submarines and Zeppelins—a far greater danger indeed, than a German soldier or sailor."

I am, therefore, satisfied that the facts which have been disclosed in the documents which are placed before me, and sworn to in the affidavit, in absence of any evidence or suggestion to the contrary can be said to be *prima facie* established, and so, we have got to examine whether the activity attributed there to the Front is unlawful activity within the meaning of Section 2(f) of the Act and whether the Mizo National Front is an unlawful association within the meaning of section 2(g) of the said Act.

8. Section 2(f) and 2(g) may be read:

"2(f)—"Unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cessation or secession;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;

2(g)—"unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity."

It is abundantly clear from the materials disclosed in this proceeding that the Mizo National Front has for its object complete secession from the Indian Union and for disrupting the sovereignty and territorial integrity of the Union of which the Mizo district and the other

areas are part and parcel. Their entire claim is an independent Mizoram outside the Indian Union. They have not only been asserting their claim but with tragic zeal accompanied by various illegal activities with foreign aid are trying to achieve the ill-chosen object by all kinds of unlawful means resorting to violence and oppressive measures. This is abundantly clear from the facts disclosed in the document filed in the case. I am, therefore, of the opinion that the Central Government is justified in making the order under section 3(1) of the Act declaring the Mizo National Front as an unlawful association with immediate effect. I am satisfied that there is sufficient cause for declaring this association as unlawful and I hereby confirm the said declaration under section 4(3) of the Act. This order shall be published in the Official Gazette as required under section 4(4) of the Act.

Sd/- P. K. GOSWAMI,
Tribunal.

Dated, Gauhati, the 11th July, 1968.

[No. F. 3/7/68-Poll(K).]

ANUPAM DHAR, Under Secy.

New Delhi, the 14 August 1968

S.O. 2897.—In pursuance of sub-rule (1) of rule 48 of Order XXI of the rules in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) and in supersession of the notification of the Government of India in the Ministry of Home Affairs No. S.O. 3260 dated the 23rd October 1965, the Central Government hereby appoints the officers specified in column (3) of the Table below as the officers to whom notice or orders attaching the salary and allowances of persons employed by the Central Government shall be sent.

TABLE

Sl. No.	Officers whose salaries and/or allowances are attached.	Officers to whom notices shall be sent.
(1)	(2)	(3)
1	All gazetted officers	The Treasury Officer/Pay and Accounts Officer who normally disburses the salary and allowances of the concerned gazetted Officer.
2	All non-gazetted officers	The Head of Office in which the non-gazetted officer is for the time being employed.

[No. 54/4/66-ESTS. (A).]

ORDERS

New Delhi, the 5th August 1968

S.O. 2898.—In exercise of the powers conferred by Rule 24 of the Central Civil Services (Conduct) Rules, 1964, the Central Government hereby directs that the powers exercisable by it under sub-rule (2) of rule 8, rule 10, rule 13, rule 14, sub-rule (1) to sub-rule (3) of rule 15, and sub-rule (2) of rule 19 of the Central Civil Services (Conduct) Rules, 1964, shall, subject to any general or special instructions issued in this behalf, be also exercisable by the Administrator of the Union Territory of Pondicherry in respect of persons holding Central Civil Posts in the Departments and Offices under his control, other than Class I officers of Central Government on deputation to the Union Territory of Pondicherry.

[No. 25/3/68-ESTS. (A)(I).]

S.O. 2899.—In exercise of the powers conferred by rule 24 of the Central Services (Conduct) Rules, 1964, the Central Government hereby directs that the powers exercisable by it under sub-rule (2) of rule 4 and Explanation 2(a)(i) to Rule 18 of the Central Civil Services (Conduct) Rules, 1964, shall, subject to any general or special instructions issued in this behalf, be also exercisable by the Administrator of the Union territory of Pondicherry in respect of persons holding Central Civil Posts Class I in the Departments and Offices under his control, other than officers of the Central Civil Services Class I and holders of Central Civil Posts Class I who are serving on deputation in the Union territory of Pondicherry.

[No. 25/3/68-ESTS. (A)(II).]

S.O. 2900.—In exercise of the powers conferred by rule 24 of the Central Civil Services (Conduct) Rules, 1964, the Central Government hereby directs that the powers exercisable by it under sub-rule (1) of rule 8 and sub-rule (4) of rule 16 of the Central Civil Services (Conduct) Rules, 1964, shall, subject to any general or special instructions issued in this behalf, be also exercisable by the Administrator of the Union Territory of Pondicherry, in respect of persons holding Central Civil Posts Class II, Class III and Class IV in Departments and Offices under his control.

[No. 25/3/68-ESTS(A)(III).]

P. S. VENKATESWARAN, Under Secy.

New Delhi, the 22nd August 1968

S.O. 2901.—In pursuance of clause (b) of rule 2 of the Citizenship Rules, 1956, and in continuation of the notifications of the Government of India, in the Ministry of Home Affairs, No. 10/2/59-IC, dated the 5th September, 1959, and No. 23/2/66-1C dated 6th January 1967, the Central Government hereby appoints the officer specified in column (2) of the Schedule hereto annexed to perform in the State of Assam the functions of the Collector under the said rules in respect of the area specified against him in the corresponding entry in column (3) and comprised within the district mentioned in column (1) of the said Schedule.

THE SCHEDULE

Name of District	Designation of the Officer	Area
(1)	(2)	(3)
Kamrup . . .	Sub-Divisional Officer, Nalbari	Nalbari

[No. 23/2/66-1C.]

C. L. GOYAL, Under Secy.

गृह मंत्रालय

नई दिल्ली, 22 अगस्त, 1968

एस० ओ० 2902.—नागरिकता नियम, 1956 के नियम 2 के खण्ड (ब) के अनुसरण में और भारत सरकार, गृह मंत्रालय की अधिसूचना सं० 10/2/59—आई० सी० तारीख 5 सितम्बर, 1959 और सं० 23/2/66 आई० सी०, तारीख 6 जनवरी, 1967 के क्रम में केन्द्रीय सरकार, एतदुपाबद्ध अनुसूची के स्तम्भ (2) में विनिर्दिष्ट आफिसर को, आसाम राज्य में ऐसे क्षेत्र की बाबत, जो उसके नाम के सामने स्तंभ (3) में तत्संबंधी प्रविष्टि में विनिर्दिष्ट हैं और जो उक्त अनुसूची के स्तंभ (1) में उल्लिखित जिले में समाविष्ट हैं, उक्त नियमों के प्रधीन कलक्टर के क्रत्यों का पालन करने के लिए एतद्वारा नियुक्त करती है।

अनुसूची

जिले का नाम	आफिसर का पदाभिधान	क्षेत्र
(1)	(2)	(3)
काम रूप	उप-खण्ड आफिसर, नलबाड़ी	नलबाड़ी

[सं० 23/2/66—आई० सी०]

सी० ए.ल० गोयल, अवर सचिव

MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS

(Department of Industrial Development)

ORDER

New Delhi, the 12th August 1968

S.O. 2903/RLIUR/18.—In pursuance of rule 18 of the Registration and Licensing of Industrial Undertakings Rules, 1952, and in particular in modification of the Order of the Government of India in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) No. 276/RLIUR/18/1, dated the 8th January, 1968, the Central Government hereby appoints Shri Y. A. Fazalbhoy, President, All India Manufacturers' Organisation, Bombay, to be a member of the Reviewing Sub-Committee of the Central Advisory Council of Industries till the 3rd November, 1969, in place of Shri B. D. Soman.

[No. 11(3)/Lic. Pol./67.]

R. C. SETHI, Under Secy.

(Department of Industrial Development)

(Indian Standard Institution)

New Delhi, the 8th August 1968

S.O. 2904—In continuation of the Ministry of Industrial Development and Company Affairs (Indian Standards Institution) Notification No. S.O. 1895 dated 22nd May 1967, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated 3rd June 1967, the Indian Standards Institution hereby notifies an additional design of the standard mark for steel doors, windows and ventilators which, together with the verbal description and the title of the Indian Standard is given in the following Schedule.

This design of the Standard Mark, for the purpose of Indian Standards Institution (Certification Marks) Act, 1952, as amended in 1961 and the Rules and Regulations framed thereunder shall come into force with effect from 1st August 1968:

THE SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and Title of the Relevant Indian Standard	Verbal description of the Design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1	IS: 1038	Steel doors, windows and ventilators	IS: 1038-1957 Specification for steel doors, windows and ventilators	The monogram of the Indian Standards Institution consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in col (2), the number designation of the Indian Standard being super-scribed on the top side of the monogram, as indicated in the design.

[No. CMD/13:9]

(Dr.) SADGOPAL,
Deputy Director General,

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 20th August 1968

S.O. 2905.—Statement of the Affairs of the Reserve Bank of India as on the 9th August 1968

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid Up	5,00,00,000	Notes	29,97,36,000
		Rupee Coin	4,98,000
Reserve Fund	80,00,00,000	Small Coin	3,67,000
National Agricultural Credit (Long Term Operations) Fund	143,00,00,000	Bills Purchased and Discounted :—	
		(a) Internal	—
		(b) External	—
		(c) Government Treasury Bills	153,88,31,000
National Agricultural Credit (Stabilisation) Fund	33,00,00,000	Balances Held Abroad*	95,20,32,000
National Industrial Credit (Long Term Operations) Fund	55,00,00,000	Investments**	308,20,22,000
		Loans and Advances to :—	
		(i) Central Government	—
		(ii) State Governments@	10,43,00,000
Deposits—		Loans and Advances to :—	
(a) Government—		(i) Scheduled Commercial Banks†	97,52,49,000
(i) Central Government	52,46,81,000	(ii) State Co-operative Banks†	159,42,47,000
		(iii) Others	3,34,40,000

LIABILITIES	Rs.	ASSETS	Rs.
		Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund—	
(a) State Governments	18,20,33,000	(a) Loans and Advances to :—	
		(i) State Governments	31,68,38,000
		(ii) State Co-operative Banks	15,83,78,000
		(iii) Central Land Mortgage Banks	..
(b) Banks—		(b) Investment in Central Land Mortgage Bank Debentures	8,00,02,000
(i) Scheduled Commercial Banks	135,66,56,000	Loans and Advances from National Agricultural Credit (Stabilisation) Fund—	
(ii) Scheduled State Co-operative Banks	5,96,42,000	Loans and Advances to State Co-operative Banks	5,78,24,000
(iii) Non-Scheduled State Co-operative Banks	88,80,000		
(iv) Other Banks	13,17,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—	
(c) Others	381,53,52,000	(a) Loans and Advances to the Development Bank	6,08,92,000
Bills Payable	22,27,49,000	(b) Investment in bonds/debentures issued by the Development Bank	..
Other Liabilities	28,81,76,000	Other Assets	36,48,30,000
	961,94,86,000		961,94,86,000

*Includes Cash, Fixed Deposits and Short-term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

③ Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund,

†Includes Rs. 85,65,59,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 14th day of August, 1968.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 9th day of August, 1968

ISSUE DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Notes held in the Banking Department	29,97,36,000	Gold Coin and Bullion:—	
Notes in circulation	<u>3259,54,25,000</u>	(a) Held in India.	115,89,25,000
Total Notes issued	<u>3289,51,61,000</u>	(b) Held outside India
		Foreign Securities	<u>206,42,00,000</u>
		TOTAL	<u>322,31,25,000</u>
		Rupee Coin	79,15,68,000
		Government of India Rupee Securities	<u>2888,04,68,000</u>
		Internal Bills of Exchange and other commercial paper	..
Total Liabilities,	<u>3289,51,61,000</u>	Total Assets:	<u>3289,51,61,000</u>

Dated the 14th day of August, 1968.

L. K. JHA,
Governor.

[No. F. 3(3)-BC/68.]

New Delhi, the 22nd August 1968

S.O. 2906.—Statement of the Affairs of the Reserve Bank of India as on the 16th August,

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital paid up	5,00,00,000	Notes	14,49,74,000
		Rupee Coin	3,69,000
Reserve Fund	80,00,00,000	Small Coin	3,59,000
National Agricultural Credit (Long Term Operations) Fund	143,00,00,000	Bills Purchased and Discounted ^{1—}	
		(a) Internal	..
		(b) External	..
		(c) Government Treasury Bills	141,06,34,000
National Agricultural Credit (Stabilisation) Fund	33,00,00,000	Balances Held Abroad* ²	97,13,00,000
		Investments** ³	351,64,28,000
National Industrial Credit (Long Term Operations) Fund	55,00,00,000	Loans and Advances to ^{1—}	
		(i) Central Government	..
		(ii) State Governments ⁴	14,36,63,000

Deposits :—		Loans and Advances to :—	
(a) Government		(i) Scheduled Commercial Banks†	86,15,09,000
(i) Central Government	53,92,67,000	(ii) State Co-operative Banks†	160,31,95,000
(ii) State Governments	13,96,30,000	(iii) Others	3,43,96,000
(b) Banks		Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund :—	
(i) Scheduled Commercial Banks	142,51,81,000	(a) Loans and Advances to :—	
(ii) Scheduled State Co-operative Banks	6,07,68,000	(i) State Governments	31,68,38,000
(iii) Non-Scheduled State Co-operative Banks	1,01,31,000	(ii) State Co-operative Banks	15,81,90,000
(iv) Other Banks	16,61,000	(iii) Central Land Mortgage Banks	..
(c) Others	392,08,73,000	(b) Investment in Central Land Mortgage Bank Debentures	8,11,99,000
Bills Payable	17,73,41,000	Loans and Advances from National Agricultural Credit (Stabilisation) Fund :—	
Other Liabilities	28,41,08,000	Loans and Advances to State Co-operative Banks	5,77,94,000
	Rupees 971,89,60,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund :—	
	Rupees 971,89,60,000	(a) Loans and Advances to the Development Bank	6,08,92,000
		(b) Investment in bonds/debentures issued by the Development Bank	..
		Other Assets	35,72,20,000

*Includes Cash, Fixed Deposits and Short-term Securities.

**Excluding investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 79,36,69,000 advanced to scheduled commercial banks against usance bills under section 17(4) (c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 21st day of August, 1968.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 16th day of August, 1968
 ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department			Gold Coin and Bullion :—		
Notes in Circulation	14,49,74,000		(a) Held in India	115,89,25,000	
	<u>3246,03,55,000</u>		(b) Held outside India	..	
Total Notes issued		3260,53,29,000	Foreign Securities	206,42,00,000	
			TOTAL		322,31,25,000
			Rupee Coin		80,17,36,000
			Government of India Rupee Securities		2858,04,68,000
			Internal Bills of Exchange and other commercial paper		..
TOTAL LIABILITIES		3260,53,29,000	TOTAL ASSETS		3260,53,29,000

Dated the 21st day of August, 1968.

L. K. JHA,
 Governor.

[No. F. 3(3)-BC/68.]
 V. SWAMINATHAN, Under Secy.

(Department of Revenue & Insurance)

ESTATE DUTY

New Delhi, the 12th August 1968

S.O. 2907.—Whereas the Legislatures of the States of Andhra Pradesh, Mysore and Orissa have passed the resolutions under clause (i) of article 252 of the Constitution, adopting the amendments made to, or in relation to, the Estate Duty Act, 1953 (34 of 1953), by—

- (i) the Central Boards of Revenue Act, 1963 (54 of 1963).
- (ii) the Finance Act, 1964 (5 of 1964),
- (iii) the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (II of 1964),
- (iv) the Direct Taxes (Amendment) Act, 1964 (31 of 1964),
- (v) the Finance Act, 1965 (10 of 1965),
- (vi) the Finance (No. 2) Act, 1965 (15 of 1965),
- (vii) the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965 (41 of 1965) and
- (viii) the Finance Act, 1966 (13 of 1966),

in so far as they relate to estate duty in respect of agricultural lands situate in the territories comprised in the said States;

Now, therefore, in pursuance of the provisions contained in clause (b) of sub-section (2A) of Section 5A of the Estate Duty Act, 1953 (34 of 1953), the Central Government hereby specifies the States of Andhra Pradesh, Mysore and Orissa to which the above-mentioned amendments shall apply, and shall be deemed to have applied, on and from the dates on which the amendments made by each of the Acts aforesaid respectively took effect, to estate duty in respect of agricultural lands situate in their territories.

[No. 25/F.No.1/9/64-E.D.]
WASIQ ALI KHAN, Dy. Secy.

MINISTRY OF COMMERCE

(Office of the Jt. Chief Controller of Imports & Exports)

ORDER

Bombay, the 10th July 1968

S.O. 2908.—A licence No. (i) P/SS/1561952/G/XX/26 C/B/25-26 and No. P/SS/1561953/T/ORf 26/C/B/25-26 both dated 4-1-68 for the value of Rs. 10,000/- and Rs. 2,320/- for the import of Nylon Moulding Powder and Polystyrene were issued to M/s. Elite Trader, 684, Mirzapur, Mirshebani Mahalat, Opp. St. X' avior's High School, Ahmedabad.

2. Thereafter, a Show Cause Notice No. E-8/AM. 68/Guj/SSI. IV/4301 dated 24th April, 1968 was issued asking them to show cause within 7 days as to why the said licences should not be cancelled on the ground that the licences had been granted through inadvertance.

3. In response to the aforesaid Show Cause Notice M/s. Elite Traders by their letter dated 20-5-1968 informed this office that they had submitted their appeal to the Director of Industries, Ahmedabad in connection with the adjustment of licence value and asked this office to keep the matter pending till this office hear, either from firm directly or from the Director of Industries, Ahmedabad, Gujarat State.

4. The undersigned has carefully examined the case and has come to the conclusion that since the licence in question have been issued through inadvertance, it is not necessary to keep the matter pending as desired by the firm.

5. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licences in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9, sub-Clause (a) of the Imports (Control) Order, 1955, hereby cancel the licences No. 1561952 and 1561953 both dated 4-1-68 for Rs. 10,000/- and (ii) Rs. 2,320/- respectively issued in favour of M/s. Elite Traders, Ahmedabad.

[No. 1/84/68/AU/Enf.]
B. C. BANERJEE,

Dy. Chief Controller of Imports & Exports
for Jt. Chief Controller of Imports and Exports,

(Office of the Joint Chief Controller of Imports & Exports)

(Central Licensing Area)

ORDER

New Delhi, the 23rd July 1968.

S.O. 2909.—A licence No. P/SS/1608868/C/XX/24/CD/23-24 dated 5-12-67 of the value of Rs. 800/- for import of Copper and Zinc was issued to M/s. Auto Industrial Corporation (India), 7847, Nai Basti Bara Hindu Rao, Delhi, subject to the condition that all the items of the goods, imported under it shall be used only in the licence holders, factory and no portion thereof shall be sold to any other party or utilised or permitted to be used in any other manner.

2. Thereafter, a show cause notice No. A-82/67/ENF/CLA/A-691, dated 27-4-68 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the Central Govt. is satisfied that the licence will not serve the purpose for which it was granted in terms of Clause 2, sub-clause (cc).

3. In response to the aforesaid show cause notice, M/s. Auto Industrial Corporation (India) 7847, Nai Basti, Bara Hindu Rao, Delhi furnished no explanation.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/SS/1608868/C/XX/24/CD/23-24 dated 5-12-67 for Rs. 800/- issued in favour of M/s. Auto Industrial Corporation (India), 7847, Nai Basti, Bara Hindu Rao, Delhi.

[No. A-22/67/ENF/CLA/3526.]

J. S. BEDI,
Jt. Chief Controller of Imports & Exports

(Office of the Chief Controller of Imports & Exports)

ORDER

New Delhi, the 19th August, 1968

S.O. 2910.—In exercise of the powers conferred by clause 9 (cc) of the Import (Control) Order No. 17/55, dated 7th December, 1955, as amended, the undersigned hereby cancels both the Customs purposes copy and Exchange Purposes copy of Import Licence No. G/RC/2086588/C/XX/27/CH/25 dated 7-5-1968 for the importation of 'FAG Self Aligning Spherical Roller Bearings 22320 HLK, MB. G. 3, F-2, with withdrawal Sleeves FAG/AHX 2320, F-2, falling under serial No. 19(2) (i) of Part II of the I.T.C. Schedule valued at Rs. 15910/- issued in favour of M/s. Special Engineering Services Pvt. Ltd. Calcutta.

The reason for cancellation of the licence is that the licence firm have closed their business and are therefore unable to import the goods.

[No. 4—S/Rly/68-69/GLS/232.]

S. A. SESAN,
Dy. Chief Controller of Imports & Exports

MINISTRY OF HEALTH FAMILY PLANNING & URBAN DEVELOPMENT

(Department of Health & U.D.)

New Delhi, the 13th August 1968

S.O. 2911.—Whereas in pursuance of clause (d) of section 3 of the Dentists Act, 1948 (16 of 1948), the following persons have been elected by the members of the Senate of the Universities specifies

against their names to be member of the Dental Council of India with effect from the date of election shown against each, namely:—

Particulars of member	Name of the University which elected him	Date of election
1. Dr. Joginder Singh, BDS, LDS, RCS., Head of the Dental Wing, Government Medical College, Patiala. (<i>Vice</i> Dr. S. J. Vazirani—term expired)	Punjab University	27th March, 1968.
2. Dr. T. B. Patel, MBBS, B. Sc., B. Hy., D.P.H. (London), Director of Health and Medical Services, Ahmedabad.	Gujarat University	9th February, 1968.

And whereas in pursuance of the provisions of clause (e) of section 3 of the said Act, Dr. M.K. Mani, BDS, MDS, Associate Professor of Operative Dentistry, Dental College, Trivandrum, has been nominated by the Government of Kerala to be a member of the Dental Council of India with effect from the 27th May, 1968 *vide* Dr. John Parackal, whose term has expired;

Now therefore in pursuance of section 3 of the said Act, the Central Government hereby makes the following amendments in the notification of the Government of India in the late Ministry of Health No. F.3-2/62-MII, dated the 17th October, 1962, namely:—

In the said notification—

(a) under the heading "Elected under clause (d) of section 3", (i) for the entry against serial No. 6, the following entry shall be substituted, namely:—

"6. Dr. Joginder Singh, BDS, LDS, RCS., Head of the Dental Wing, Government Medical College, Patiala".

(ii) after serial No. 12 and the entry relating thereto the following serial No. and entry shall be inserted, namely:—

"13. Dr. T. B. Patel, MBBS, B. Sc., B. Hy., D.P.H. (London), Director of Health and Medical Services, Ahmedabad".

(b) under the heading "Nominated under clause (e) of section 3, for the entry against serial No. 3", the following entry shall be inserted, namely:—

"3. Dr. M. K. Mani, BDS, MDS, Associate Professor of Operative Dentistry, Dental College, Trivandrum".

[No. F.3-3/67-MPT.]

(Department of Health and Urban Development)

New Delhi, the 22nd August 1968

S.O. 2912.—In pursuance of sub-rule (6) of rule 57 of the Indian Port Health Rules, 1955, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Health and Family Planning (Department of Health) No. S.O. 1581, dated the 2nd May, 1967 published at page 1681 in Part II, Section 3(ii) of the Gazette of India dated the 13th May, 1967, namely :—

For Part III of the Schedule to the said notification, the following Part shall be substituted, namely :—

“Part III

Scale of fees to be charged for the grant of a Derating Certificate after derating has been carried out by the Port Health Organisation by poison baiting. Rs.

For a vessel having a cubic capacity of 8500 cubic metres or less	250
For a vessel having a cubic capacity of more than 8500 cubic metres	300

[No. F. 13-26/61-IH.1]

L. K. MURTHY-Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 12th August 1968

S.O. 2913.—In exercise of the powers conferred by sub-section (1) of section 3 of the Cinematograph Act, 1952, read with rule 4 of the Cinematograph (Censorship) Rules, 1958, the Central Government hereby appoints the following persons as a member of the Central Board of Film Censors with immediate effect.

1. Shri B. N. Sircar.
2. Shri Prabodh Raval.
3. Kumari A. M. Nadkarni.
4. Smt. Veena Duggal.

[No. II/8/67-F(C).]

S.O. 2914.—In exercise of the powers conferred by Section 5(1) of the Cinematograph Act, 1952, and sub-rule (3) of rule 8 read with sub-rule 2 of rule 9 of the Cinematograph (Censorship) Rules, 1958, the Central Government hereby appoints Shri Nissim Ezekiel as a member of the Advisory Panel of the Central Board of Film Censors, at Bombay with immediate effect.

[No. II/2/68-F(C).]

H. B. KANSAL, Under Secy.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 2nd August 1968

S.O. 2915.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial disputes between the employers in relation to the Nandini Mines of Bhilai Steel Plant, Bhilai and their workmen, which was received by the Central Government on the 29th July, 1968.

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR.

Dated July 22, 1968

PRESENT:

Sri G. C. Agarwala—*Presiding Officer.*

CASE REF. NO. CGIT/LC(R)(150) OF 1967

PARTIES:

Employers in relation to the Nandini Mines of Bhilai Steel Plant, Bhilai (District Durg.)

Vs.

Their workmen, represented through the President, Samyukta Khadan Mazdur Sangh, P.O. Nandini Mines, District Durg.

APPEARANCES:

For employers—S/Shri M. R. Raju, Senior Labour Officer (Conciliation) and K. G. Marar, Additional Labour Welfare Officer.

For workmen—Sri P. K. Thakur, Vice President, Samyukta Khadan Mazdur Sangh.

INDUSTRY: Steel Plant.

DISTRICT: Durg (M.P.)

AWARD

By Notification No. 37/12/67-LRI dated 22nd November 1967, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this tribunal, for adjudication:—

Matter of Dispute

Whether the action of the management in charging rent from the employees of the Nandini Mines in respect of 70 quarters which have been

renovated is justified and legal? If not, to what relief are these workmen entitled?

2. Facts leading to the dispute are short and simple. Certain temporary sheds, 320 in number, were set up for the construction staff in the Nandini Mines during the year 1960-61. Walls of the sheds were of bamboo mattings and doors and windows were of inferior stuff. The cost as stated by the management was to the tune of Rs. 2,15,245.30. There was a severe cyclone in 1962 as a result of which these sheds were blown off and temporary sheds were renovated by brick-walls and for windows and doors, better wood was used. This again was made at a cost of Rs. 2,35,751.00. There was again a cyclone of greater severity on 30th January 1964 and 70 of these temporary quarters were again repaired and renovated. The total cost of all these worked up to Rs. 6.4 lacs. The allotment of these 70 huts was made by an order of the Mines Manager dated 11th September, 1964 (Ex. E/8). No rent was being charged from the allottees either before or after the allotment. No condition was stated in the allotment order that rent would be charged. There was an audit objection raised on 7th October 1965 which stated that no rent was being charged for the 300 labour huts and 20 temporary staff quarters from August, 1960 to March, 1965 and which resulted in the loss of revenue to the extent of Rs. 1,28,000/- (Ex. E/3). This audit objection geared up the machinery and a Committee was appointed to assess the rent. It comprised of the Mines Manager, Zonal Engineer and Assistant Accounts Officer. The Committee recommended that upto 31st December 1965 rent should be charged @ Rs. 3/- p.m. based on the capital cost of Rs. 2,15,245/- and that from 1st January 1966 rent should be charged @ Rs. 4/- p.m. from those drawing pay below Rs. 110/- and Rs. 6/- from those drawing pay of Rs. 110/- and above or 5% of the pay whichever is less. On the basis of this the Superintendent, Ore Mines and Quarries issued an order dated 23rd October, 1965 (Ex. E/9) for recovery of rent. Some recovery was started from March, 1966 in respect of these 70 hutments @ Rs. 16/- to Rs. 24/- from each occupant which covered the arrears for past occupation. The Union protested to the management by means of letter dated 12th April 1966 (Ex. E/5) complaining that recovery has been made from 72 workers who were occupying the rent-free temporary huts. The Superintendent, Ore Mines & Quarries in his reply dated 28th April 1966 (Ex. E/6) intimated that these quarries had been renovated at a cost Rs. 2 lacs and odd and the occupants were liable to pay rent. The Union then took up the matter in conciliation which in due course resulted in this reference.

3. I had occasion to inspect the hutments on 19th May 1968. There were two types of these hutments. In one type, rooms were found divided in two apartments by small, low walls without door. The partition wall did not go upto the roof. The other type of hutments were smaller and were without partition walls. All these were roofed by corrugated G. I. sheets and walls were without plaster. There were no ventilators but one rickety window was found in every room. Each room had one entrance and one window. There were latrines at some distance but were not in use for want of supply of water. There was no facilities of running water, light or conservancy. The quarters still are in the nature of temporary hutments as in fact were described so by the Mines Manager while allotting them. The stand taken by the management that even though the accommodation is not of standard type of quarters with necessary amenities for which rent is charged @ 7½% the occupants of these hutments or quarters are liable to pay rent because they have been renovated. It is stated that by two previous allotments, one dated 2nd September 1963 (Ex. E/10) with respect to 10 of these and the other (Ex. E/2) for 30 of these hutments, allottees had been warned that they would be liable to pay rent as and when decided. That may have been so, but the subsequent allotment after renovation of the gale in January, 1964 makes no mention about the liability to pay rent. The occupants are the allottees by reason of this allotment order dated 11th September 1964. When no liability to pay rent was imposed on the allottees it is not open to the management to require the occupants to pay rent just because the finance raised objection and a Committee in which the workmen rather allottees were not represented, not even consulted, had decided that rent at reduced rate for these temporary hutments should be charged. General Manager's order dated 6th August 1957 (Ex. E/4) stating that standard rent of each building would be chargeable from the date of occupation and in accordance with Fundamental Rule 45A subject to maximum of 10% of the pay is wholly inapplicable. That order of the General Manager has application to buildings and quarters and not for temporary hutments. In any case, it was not observed when the occupants occupied these temporary hutments in 1961 and were continued to be permitted to do so without any liability of rent. Even for renovated hutments, the occupation was not made dependent on payment

of rent. Without making the hutments into standard labour quarters with public facilities of light, water and conservancy, the management is not justified to charge rent, much less from a back date. Workers cannot be made to pay for money thrown in gutter by this ill planned and misconceived investment.

Decision

The management will not be justified to charge rent from the occupants of the hutments in question until they have been made of standard types comparable with such for which rent is charged. In any case without improving these quarters and providing necessary public amenities of light, water and conservancy no rent will be chargeable. The Union will be entitled to Rs. 100/- as costs of proceedings from the management.

G. C. AGARWALA,
Presiding Officer.
22-7-1968.

[No. 37/12/67-LRI.]

New Delhi, the 14th August 1968

S.O. 2916.—Whereas a vacancy has occurred in the office of the presiding officer of the Industrial Tribunal, Calcutta, constituted by the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2653, dated the 24th August, 1966;

Now, therefore, in pursuance of the provisions of section 8 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby appoints Shri Binayak Nath Banerjee as the presiding officer of the said Industrial Tribunal with effect from the 23rd July, 1968.

[No. 1/56/68-LRI/(i).]

S.O. 2917.—Whereas a vacancy has occurred in the office of the presiding officer of the Labour Court No. 2, at Calcutta constituted by the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2652, dated the 24th August 1966;

Now, therefore in pursuance of the provisions of section 8 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby appoints Shri Binayak Nath Banerjee as the presiding officer of the said Labour Court with effect from the 23rd July, 1968.

[No. 1/56/68-LRI/(ii).]

New Delhi, the 19th August 1968

S.O. 2918.—In exercise of the powers conferred by sub-sections (1) and (2) of section 7 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby makes the following amendment in the Notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. 4329, dated the 30th November, 1967 appearing on page 4586 of the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 9th December, 1962, namely:—

In the said notification,

For the word "Rohtak" the word "Faridabad" shall be substituted.

[No. F. 1/45/68-LRI.]

S.O. 2919.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Presiding Officer, Central Government Industrial Tribunal, Dhanbad, in the matter of an application under Section 33A of the said Act, from Shri Ali Mohammed, Male Mazdoor, B. No. 1982, C/o Hamid Mian, Blaster, No. 3 Gorkha Line, A/7-12, Post Office Mosaboni Mines, District Singhbhum, Bihar, which was received by the Central Government on the 7th August, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-Cum-LABOUR COURT AT DHANBAD

In the matter of a complaint under section 33A of the Industrial Disputes Act, 1947.

COMPLAINT No. 4 OF 1968.

PARTIES :

Ali Mohammed, Male Mazdoor, B. No. 1982, C/o Hamid Mian, Blaster, No. 3, Gorkha Line, A/7-12, P.O. Mosaboni Mines, Distt. Singhbhum, Bihar—*Complainant.*

Vs.

M/s. Indian Copper Corporation Ltd., P.O. Mosaboni Mines, District Singhbhum, Bihar—*Opposite Party.*

PRESIDENT :

Shri Kamla Sahai, Presiding Officer.

APPEARANCES :

For the Complainant—None.

For the Opposite Party—Shri K. C. Goel, Legal Officer.

STATE Bihar. :

INDUSTRY : Copper.

Dhanbad, dated the 30th July, 1968.

AWARD

This complaint by Ali Mohammed, Male Mazdoor, (B. No. 1982) was filed under section 33A of the Industrial Disputes Act, 1947 before the Central Government Industrial Tribunal at Jabolpur, but the Ministry transferred it to this Tribunal *vide* Government Order No. 24/36/66-LRI dated the 3rd February, 1968. It has been registered here as complaint No. 4 of 1968.

2. The complainant's case is that he was appointed on the 23rd May, 1966 on probation for six months and that he was confirmed on the 23rd November, 1966, but his services were terminated on the 23rd January, 1967 as a puritive and malafide measure. The company's case in its rejoinder is that Ali Mohammed was in fact appointed on the 23rd May, 1966 on probation for six months but he had no right to be automatically confirmed after six months' work on the 23rd November, 1966 nor was any order passed on that date for his confirmation. His services were found unsatisfactory and hence, after the expiry of six months, his services were extended to the 23rd January, 1967 when his services were terminated.

3. The complainant has not appeared. Shri B. N. Singh, Advocate, appears on behalf of the Mosaboni Mines Labour Union. He says that he has no instruction in this case.

4. The company has filed some documents to prove its case. The complainant has not filed any document nor has he taken any step to prove his case that he was a confirmed employee of the company. If he continued to be on probation as alleged by the company, it was open to the company to terminate his services on finding his work to be unsatisfactory.

5. As the complainant has not proved his case, the complaint is dismissed. Let this award be submitted to the Central Government.

Sd/- KAMLA SAHAI,
Presiding Officer,
Central Govt. Industrial
Tribunal, Dhanbad.
[No. 24/36/66-LRI.]

New Delhi, the 26th August 1968

S.O. 2920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bombay in respect of a complaint under section 33A of the said Act, filed by Shri K. Pareesam, Senior Technical Officer, Air India, which was received by the Central Government on 8th August 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL BOMBAY

COMPLAINT No. CGIT-11 OF 1968

(ARISING OUT OF REFERENCE NO. CGIT-26 OF 1967)

PARTIES:

Shri K. Pareesam.—*Complainant.*

Vs.

Air India Corporation, Bombay.—*Opposition Party.*

PRESENT:

Shri A. T. Zambre, Presiding Officer.

APPEARANCES:

For the Air India.—Shri P. P. Khambhata, Counsel, with Shri T. V. Lalwani, Industrial Relations Adviser, and Shri P. D. Baliwala, Dy. Engineering Manager.

For the Complainant.—Shri Karedia Pareesam.

STATE: Maharashtra.

INDUSTRY: Airways.

Bombay, 21st June 1968

AWARD

1. Mr. K. Pareesam Sr. Technical Officer of the Air India Corporation has filed this complaint against the corporation under section 33A of the Industrial Disputes Act, 1947.

2. The employees of the Air India Corporation represented by the Aircrafts Engineering Association had made a demand to the corporation that no one except the Aircraft maintenance engineers employed by the corporation should be or required or allowed to inspect or certify the maintenance or overhaul of the aircraft or its components or do both as per terms of the agreement arrived at between corporation and the association. The management had not accepted the claim and had contended that the agreement had nothing to do whatsoever with the inspection and certification of Air Crafts. They have contended that the employment of approved Inspectors in the workshop of the corporation at Santacruz was the long standing practice followed and was in accordance with the Director General of Civil Aviation requirement for approved inspection. As a result this dispute could not be settled and the employees had also resorted to strike and the matter has been referred to the tribunal and is pending in reference No. CGIT-26 of 1967.

3. The complaint Shri K. Pareesam who was working as the senior technical officer in the scale of Rs. 1000—100—1500 and drawing Rs. 1400/- was alleged to have taken part in the above mentioned illegal strike and was proceeded for misconduct. The corporation charged the complainant with three misconducts :

- (a) Wilful in subordination and disobedience of the lawful and reasonable order of his superiors.
- (b) Absence from duty without permission and without sufficient cause in combination with orders.
- (c) Aiding and abetting an illegal strike by the All India Aircraft Engineers' Association.

4. A departmental enquiry committee was appointed and after notice an enquiry was held.

5. The complainant Pareesam did not take part in the departmental enquiry proceeding and it was heard *ex parte* and as the result of the departmental enquiry the General Manager reduced him in rank by order No. GM/74-15 (B)/6217 dated 17th November, 1967 which was communicated to him by the Personnel Manager in letter No. E/16-8-3/6217 of 17th November, 1967. The complainant thereafter preferred an appeal against order of reduction. The

appellate authority chairman of the corporation after hearing the appellant accepted the finding of the enquiry committee regarding the misconduct. But considering the good record of services of the complainant modified the order of sentence and passed the order reducing him by one stage i.e. Rs. 1,300/- in the same grade.

6. The complainant had alleged in the complaint that he was directly concerned in the dispute pending before the tribunal in reference No. CGIT-26 of 1967. The departmental enquiry held by the corporation was merely an offshoot of the strike undertaken by the workmen which resulted in the reference. The corporation had not obtained any permission of the tribunal before passing the order. The enquiry was illegal *mala fide* and unjust. It was also opposed to the canons of natural justice and the same should be set aside.

7. After the complainant notices were issued to the parties, but before any written statement by the corporation the complainant requested the tribunal by a letter to treat his complaint as closed. Hence again notices were issued and the parties were heard.

8. The complainant who is present admitted that he had sent the letter about the withdrawal of the complaint. He requested the tribunal to give him permission to withdraw the complaint as he did not want to proceed with the same complaint. The corporation has also no objection. As the complainant does not press his complaint it shall have to be held that the management has not contravened the provision of section 33 of the Industrial Disputes Act and the complainant is not entitled to any relief. Hence my award accordingly.

No Order as to costs.

Copy of this award is to be submitted to the government as required by law.

(Sd.) A. T. ZAMBRE,
Presiding Officer,

Central Government Industrial Tribunal, Bombay.

[No. 4/163/67-LRIII.]

ORDERS

New Delhi, the 14th August 1968

S.O. 2921.—Whereas a vacancy has occurred in the office of the presiding officer of the Labour Court with headquarters at Bangalore, constituted by the notification of the Government of India in the Ministry of Labour and Employment, No. S.O. 459, dated the 5th February, 1963;

Now, therefore, in pursuance of the provisions of section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri M.K. Srinivasa Iyengar as the presiding officer of the Labour Court constituted as aforesaid.

[No. F. 1/46/68-LRI.]

S.O. 2922.—Whereas the Central Government is of opinion that an Industrial dispute exists between the employers in relation to the M/s. Martin's Light Railways Calcutta and their workmen in respect of the matter specified in the Schedule hereto annexed.

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal (No. 3), Dhanbad constituted under section 7A of the said Act.

SCHEDULE

“Whether the management of Arrah Sasaram Light Railway Company Limited, was justified in terminating the services of Shri S. S. Tiwari, Clerk with effect from the 26th January, 1967. If not, to what relief is the workman entitled ?

[No. 2/18/68-LRIII.]

New Delhi, the 19th August 1968

S.O. 2923.—Whereas an industrial dispute exists between the Bhilai Steel Plant, Bhilai [Senior Labour Officer (Conciliation)] (hereinafter referred to as the said Company) and their workmen represented by Samyukta Khadan Mazdoor Sangh, Post Office Nandini Mines, District Durg (hereinafter referred to as the Union).

And whereas the said Company and the Union have, by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), referred the said dispute to arbitration of the person mentioned therein, and a copy of the said arbitration agreement has been forwarded to the Central Government;

Now, the before, in pursuance of the provisions of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby published the said arbitration agreement which was received by it on the 26th July, 1968.

Agreement

(Under Section 10-A of the Industrial Disputes Act, 1947)

BETWEEN

Names of the parties

Representing Employers :

Shri M. R. Raju,
Senior Labour Officer (Conciliation),
Bhilai Steel Plant,
Bhilai (District Durg) (M. P.)

Representing Workmen :

Shri D. K. Rao,
Secretary,
Samyukta Khadan Mazdoor Sangh,
P.O. Nandini Mines (Distt. Durg) (M.P.)

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri S. Sankarappa, Assistant Labour Commissioner (C), China Chambers, Mount Road Extension, Nagpur.

(i) *Specific matters in disputes*

“Whether the demand of the Union for the upgradation of all Pump Attendants in Nandini Mines is justified ? If so, to what relief are these workmen entitled and from which date” ?

(ii) *Details of the parties to the dispute including the name and address of the establishment or undertaking involved*

Employer in relation to the Nandini Mines of Bhilai Steel Plant, P. O. Nandini Mines (Distt. Durg) (M.P.) and their workmen represented by Samyukta Khadan Mazdoor Sangh, P.O. Nandini Mines (Distt. Durg) (M.P.)

(iii) *Name of Union, if any, representing the workmen in question*

Samyukta Khadan Mazdoor Sangh, P.O. Nandini Mines (Distt. Durg) (M.P.)

(iv) *Total Number of workmen employed in the undertaking affected*
1600

(v) *Estimated number of workmen affected or likely to be affected by the dispute*
22

We further agree that the decision of the Arbitrator shall be binding on us.

The Arbitrator shall make his award within a period of 3 months or within such further time as is extended by the mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Representing employers :

Sd./- M. R. RAJU,
13-7-1968.

Representing workmen :

Sd./- D. K. RAO,
13-7-1968.

Witnesses :

1. Sd./- KARTIK RAM SAHU,—13-7-68.
Organising Secretary,

S. K. M. Sangh, Nandini.

2. Sd./- P. S. RAO,

Bilaspur, dated the 13th July, 1968.

[No. F. 37/33/68-LRI.]

O. P. TALWAR, Under Secy.

(Department of Labour & Employment)

New Delhi, the 14th August, 1968

S.O. 2924.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Sarvashri B. N. Bajpai and R. N. Misra to be Inspectors for the whole of the State of Uttar Pradesh for the purposes of the said Act and of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control, of the Central Government or in relation to any establishment connected with a railway company, a mine or an oil-field or a controlled industry.

[No. 21(4)/68-PF-I.]

S.O. 2925.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location in an implemented area of the State Transport Workshops at Meenakshipuram and Ranithottam of Kanya Kumari Branch of the Madras State Transport Department, hereby exempts the said Transport Workshops from the payment of the employer's special contribution leviable under chapter VA of the said Act for a further period of one year with effect from the 29th July, 1968.

[No. F. 6(70)/68-HI.]

S.O. 2926.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factory, namely, the laundry Plant at the Medical College and Hospital, Nagpur, hereby exempts the said factory from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period of one year with effect from the 5th August, 1968.

[No. F. 6(72)/68-HI.]

New Delhi, the 17th August 1968

S.O. 2927.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Moti City Sales, 134, Nyniappa Naick Street, Madras-3 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st August, 1968.

[No. 8/104/68/PF-II.]

DALJIT SINGH, Under Secy.

(Dept. of Labour and Employment)

New Delhi, the 17th August, 1968

S.O. 2928.—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (49 of 1948), the Central Government hereby makes the following Scheme further to amend the Calcutta Unregistered Dock Workers (Regulation of Employment) Scheme, 1957, the same having been previously published as required by the said sub-section namely :—

1. This Scheme may be called the Calcutta Unregistered Dock Workers (Regulation of Employment) Second Amendment Scheme, 1968.

2. In clause 14 of the Calcutta Unregistered Dock Workers (Regulation of Employment) Scheme, 1957—

(i) for sub-clause (3), the following sub-clause shall be substituted, namely :—

"(3)(i) A listed dock worker in any of the pools who fails to comply with any of the provisions of this Scheme, or commits any act of indiscipline or misconduct, may be reported against in writing to the Labour Officer.

(ii) The Labour Officer after investigating the matter may give him a warning in writing or suspend him for a period not exceeding seven days."

(ii) in sub-clauses (3-A), (4) and (5), the words "or the Personnel Officer, as the case may be," wherever they occur, shall be omitted.

[No. 628/45/66-Per. II.]

New Delhi, the 19th August 1968

S.O. 2929.—The following draft of a scheme for the port of Visakhapatnam which the Central Government proposes to make in exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) is published as required by the said sub-section for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 2nd September, 1968.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government.

Draft Scheme

THE VISAKHAPATNAM UNREGISTERED DOCK WORKERS (REGULATION OF EMPLOYMENT) SCHEME, 1968.

1. *Name of the Scheme.*—This Scheme may be called the Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 (hereinafter referred to as the "Scheme").

2. *Objects, application and commencement.*—(1) The objects of the Scheme are to regulate the employment of the dock workers to whom this Scheme applies and to ensure efficient performance of work by the said workers.

(2) The Scheme relates to the Port of Visakhapatnam and applies to the dock workers of the classes specified in the Schedule and to the employers of such dock workers, but does not apply to :

- (a) workers engaged in any class or description of work carried out in workshops or in respect of sailing vessels or by ship's crew, or
- (b) workers engaged in any class or description of dock work carried out in relation to any ship of the Indian Navy;
- (c) monthly paid workers of listed employers :

Provided that the Scheme shall not apply to any dock worker or employer unless he is listed as such under the Scheme.

(3) It shall come into force on the date of its publication in the Official Gazette.

3. *Definition.*—In this scheme, unless there is anything repugnant in the subject or context

- (a) "Act" means the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);
- (b) "Administrative Body" means the Administrative Body appointed under clause 4 of the Scheme;
- (c) "Board" means the Vizagapatam Dock Labour Board constituted under the Act;
- (d) "Chairman" and "Deputy Chairman" means the Chairman and Deputy Chairman respectively of the Board;
- (e) "Committee" means a committee appointed under clause 14;
- (f) "daily worker" means a dock worker who is not a monthly worker;
- (g) "dock work" means work ordinarily performed by dock workers of the classes to which this Scheme applies;
- (h) "dock employer" means the person and/or firm by whom a dock worker to whom this Scheme applies is employed or is to be employed;
- (i) "Personnel Officer" and "Labour Officer" means the officers appointed as such under clause 5 or clause 13 of this Scheme;
- (j) "Listed employer" means a dock employer listed by the Board under clause 15 and includes for the purpose of clause 22 an authorised agent of such employer;
- (k) "listed worker" means a dock worker listed under clause 16;
- (l) "vessel" means an ocean going vessel or ship whose gross registered tonnage is not less than 350 tons.

4. *Administrative Body.*—(1) The Central Government may, by notification in the official gazette, appoint an association or body consisting of such employers of dock workers as the Central Government may nominate in this behalf to be the Administrative Body for the purpose of carrying out the functions assigned to it under the Scheme. If no such Administrative Body is appointed, the Deputy Chairman shall carry out the functions of the Administrative Body.

(2) The Administrative Body shall, without prejudice to the powers of the Board, Chairman and Deputy Chairman and subject to the provisions of clause 9 carry out the day to day administration of the Scheme as assigned to it hereunder.

(3) The Central Government may for sufficient cause remove any Administrative Body appointed under sub-clause (1):

Provided that the Administrative Body shall not be removed unless it has been given a reasonable opportunity of being heard.

(4) If the Deputy Chairman carries out the functions of the Administrative Body, he may be assisted by an Administrative Superintendent in the discharge of his functions under clause 10.

5. *Appointment of officers and other staff.*—The Board may appoint Personnel Officer, other officers and servants as it deems necessary and pay them such salaries and allowances and prescribe such terms and conditions of service as it deems fit:

Provided that no post the maximum salary of which exclusive of allowances is rupees eight hundred and above per mensem shall be created and no appointment to such post shall be made by the Board except with the previous approval of the Central Government:

Provided further that the sanction of the Central Government shall not be necessary to any appointment in a leave vacancy of a duration of not more than three months.

6. *Functions of the Board.*—The Board may, with a view to furthering the objects of the Scheme, take such measures as it may consider desirable including measures for—

- (a) ensuring the adequate supply and the full and proper utilisation of the listed dock workers for the purpose of facilitating the rapid and economic turnaround of vessels and the speedy transit of goods through the port;
- (b) regulating the recruitment and entry into and the discharge from the Scheme of dock workers and the allocation of listed dock workers to listed employers;
- (c) determining and keeping under review, in consultation with the Administrative Body the number of listed employers and listed dock workers from time to time on the registers or records and the increase or reduction to be made in the numbers in any such registers or records;
- (d) keeping, adjusting and maintaining the employers' registers, entering or re-entering therein the name of any dock employer and where circumstances so require, removing from such register the name of any listed dock employer, either at his own request or in accordance with the provisions of the Scheme;
- (e) keeping, adjusting and maintaining from time to time such registers or records, as may be necessary, of dock workers, including any registers or records of dock workers who are temporarily not available for dock work and whose absence has been approved by the Administrative Body and, where circumstances so require, removing from registers or records the name of any listed dock worker either at his own request or in accordance with the provisions of the Scheme;
- (f) the grouping or regrouping of all listed dock workers into such groups as may be determined by the Board after consultation with the Administrative Body and thereafter reviewing the grouping of any listed dock worker on the application of the Administrative Body or of the listed dock worker;
- (g) making provision for the training and welfare of listed dock workers including medical benefits in so far as such provision does not exist apart from the Scheme;
- (h) levying and recovering from listed employers contributions in respect of the expenses of the Scheme;
- (i) making provision for health and safety measures in places where dock workers are employed in so far as such provision does not exist apart from the Scheme;
- (j) maintaining and administering the Dock Workers Welfare Fund and recovering from all listed employers contributions towards the Fund in accordance with the rules of the Fund that may be framed under the Scheme.
- (k) maintaining and administering a provident fund and a gratuity for listed workers in the pool.
- (l) borrowing or raising money and issuing debentures or other securities and, for the purpose of securing any debt or obligation mortgaging or charging all or any part of the property of the Board.

7. *Responsibilities and duties of the Board in meeting.*—The Board in meeting shall be responsible for dealing with all matters of policy and in particular to—

- (a) fix the number of dock workers to be listed under various categories;
- (b) increase or decrease the number of workers in any category on the register or record from time to time as may be necessary after a periodical review of the registers and anticipated requirements;

- (c) sanction the temporary listing of a specified number of workers in any category for a specified period;
- (d) consider listing of new employers on the recommendations of the Chairman;
- (e) prescribe forms, records, registers, statements and the like required to be maintained under the Scheme;
- (f) determine the wages in relation to the actual output of work pertaining to the categories of listed workers in different stages and also their allowances and other conditions of service.
- (g) fix the rate of administrative and other charges under clause 22.
- (h) fix the rate of contribution to be made by listed employers to the Dock Workers Welfare Fund;
- (i) appoint, abolish or reconstitute Committees under clause 14;
- (j) sanction the annual budget;
- (k) subject to the provisions of clause 9(1) (h) sanction the creation of posts which are specified and make appointments to such posts;
- (l) make recommendations to the Central Government about changes in Schedule;
- (m) make recommendations to the Central Government about any modifications in the Scheme;
- (n) endeavour to settle disputes about which a request for adjudication has been made to the Central Government by the parties concerned and report to the Government the results of such endeavours;
- (o) discuss statistics of output of labour and record its observations and directions; and
- (p) sanction the opening of accounts in such scheduled Banks as it may direct and the operation of such accounts by such persons as the Board may from time to time direct.

8. *Annual Estimates.*—The Chairman shall, at a special meeting to be held before the end of February in each year, lay before the Board the annual budget as received from the Administrative Body for the year commencing on the first day of April then next ensuing, in such detail and form as the Board may, from time to time, prescribe. The Board shall consider the estimates so presented to it and shall, within four weeks of its presentation, sanction the same either unaltered or subject to such alterations as it may deem fit.

9. *Responsibilities and duties of Chairman.*—(1) The Chairman shall have full administrative and executive powers to deal with all matters relating to the day-to-day administration of the Scheme and in particular:—

- (a) to ensure that the decisions of the Board in regard to the adjustment of the workers' registers are carried out expeditiously;
- (b) to supervise and control the working of the Administrative Body and to take suitable steps if any irregularities are detected by him or brought to his notice;
- (c) to ensure that proper and adequate supervision is provided by the listed employers over the workers employed at their places of work;
- (d) to ensure that the provisions of the Scheme in regard to transfer and promotion of workers are carried out;
- (e) to constitute Medical Boards when required;
- (f) to ensure that conditions, laid down in the Scheme, for the listing of employers are complied with by them;
- (g) to ensure that all forms, registers, returns and documents, prescribed under the Scheme, are properly maintained;
- (h) to sanction the creation of posts the maximum salary of which exclusive of allowances is upto rupees six hundred and to make appointments to such posts;
- (i) to take disciplinary action against listed dock workers and employers in accordance with the provisions of the Scheme;
- (j) to allow relaxation in the maximum number of shifts per worker per week or per month, and to report such cases to the Board;
- (k) to declare that there has been a 'go-slow' and to take action as authorised under the Scheme;
- (l) to declare a 'state of emergency' and to take action as authorised under the Scheme;
- (m) to make a report, when necessary to the Central Government, under rule 5 of the Dock Workers (Regulation of Employment) Rules, 1962;
- (n) to sanction the transfer of a monthly worker to the reserve pool at the request of the employer or the dock worker, as provided for in the Scheme;

(o) to deal with appeals under clauses 33 and 34.

(p) to discharge all other duties and responsibilities specifically vested in the Chairman under the Scheme.

(2) The Chairman may delegate in writing to the Deputy Chairman any of the functions under sub-clause (1).

10. *Responsibilities and duties of the Deputy Chairman.*—The Deputy Chairman shall assist the Chairman in the discharge of his functions and, in particular, shall—

- (a) discharge all functions relating to disciplinary action against listed employers and dock workers to the extent permitted under clause 32.
- (b) function as Chairman of Committees of the Board to which he may be nominated a member;
- (c) preside over the meetings of the Board in the absence of the Chairman;
- (d) carry out the functions of the Administrative Body if there is no Administrative Body appointed under clause 4.
- (e) exercise such other functions as are delegated to him by the Chairman under clause 9.

11. *Functions of the Personnel Officer.*—The Personnel Officer shall assist the Deputy Chairman and shall carry out such functions as may be delegated to him by the Deputy Chairman.

12. *Functions of the Administrative Body.*—Without prejudice to the powers and functions of the Board, Chairman and the Deputy Chairman, the Administrative Body shall be responsible for the administration of the Scheme and shall in particular be responsible for—

- (2) keeping, adjusting and maintaining the employers' list entering or re-entering there in the name of any dock employer and, where circumstances so require, removing from the list the name of any listed employer either at his own request or in accordance with the provisions of the Scheme;
- (b) keeping, adjusting and maintaining from time to time such lists, registers or records as may be necessary, of dock workers including any lists, registers or records of dock workers who are temporarily not available for dock work and whose absence has been approved by the Administrative Body and where circumstances so required removing from any register, list or record the name of any listed dock worker either at his own request or in accordance with the provisions of the Scheme;
- (c) the employment and control of listed dock workers available for work when they are not otherwise employed in accordance with the Scheme;
- (d) the grouping or re-grouping of listed dock workers in accordance with the instructions received from the Board in such groups as may be determined by the Board;
- (e) the allocation of listed dock workers in each group who are available for work to listed employers and for this purpose the Administrative Body shall—
 - (f) be deemed to act as an agent for the employer,
 - (ii) make the fullest possible use of listed dock workers in each group,
 - (iii) keep the record of attendance at call stands or control points of listed dock workers,
 - (iv) provide for the maintenance of the records of employment and earnings,
 - (v) allocate listed dock workers in accordance with clause 18.
- (vi) make necessary entries in the Attendance and Wage Cards of the listed dock workers in the pool;
- (f) (i) the collection of administrative and other charges, contribution to the Dock Workers Welfare Fund or any other contribution from the listed employers as may be prescribed under the Scheme;
- (ii) the collection of the listed dock workers' contribution to the Provident Fund, Insurance Fund or any other Fund which may be constituted under the scheme;
- (iii) the payment as agent of the listed employer to each daily worker of all earnings properly due to the dock worker from the employer and the payment to such workers of all monies payable by the Board to those workers in accordance with the provisions of the Scheme;
- (g) appointing, subject to the budget provision, such officers and servants from time to time as may be necessary;
- (h) making provision for training of workers as it may consider necessary;

Provided that appointment to posts the maximum salary of which exclusive of allowances is upto rupees three hundred per month shall be subject to clauses 7 (k) or 9(1)(h) as the case may be.

- (i) the keeping of proper accounts of the cost of operating the Scheme and of all receipts and expenses under it and making and submitting to the Board an annual report and audited balance-sheet;
- (j) the framing of the buget annually, submitting the same to the Board on or before the fifteenth day of February in each year and getting it approved by the Board;
- (k) maintaining complete service records of all listed dock workers covered under Schedule;
- (l) such other functions as may from time to time subject to the provisions of the Scheme, be assigned to it by the Board the Chairman or the Deputy Chairman.

13. *Labour Officer*.—The Administrative Body shall appoint a Labour Officer with the approval of the Board, who shall carry out such functions as may be assigned to him by that Body consistent with the provisions of the Schemes and shall, in particular, carry out the functions vested in him under clause 32.

14. *Committees*.—The Board may appoint one or more Committees composed of such representatives of dock employers and dock workers to whom this Scheme applies and such other person or persons as may be nominated by the Board to facilitate compliance with or implementation of the provisions of this Scheme and may entrust to such Committee or committees such of its functions as it may deem fit. The Board may dissolve or reconstitute such Committee or Committees from time to time as it may deem fit.

15. *Listing of employers of dock workers*.—(1) The Board shall maintain a list of employers of dock workers to whom this Scheme applies.

(2) Every person, who is an employer of dock workers to whom this scheme applies on the date of commencement of the Scheme, and who applies to the Board in this behalf on or before such date as may be fixed by the Board for this purpose, shall be entitled to be listed under this Scheme.

(3) The Board may, if it considers expedient so to do, list employers other than those covered by sub-clause (2).

(4) Where the Board refuses to list an employer, it shall communicate to the person concerned copy of the order together with the reasons therefor;

(5) Notwithstanding any other provision of this Scheme, the Board-in-meeting may direct the removal of the name of a listed employer who has not transacted any work for two consecutive years:

Provided that before giving any such direction, the Board shall give the employer an opportunity of showing cause why the proposed direction should not be issued.

(6) Notwithstanding anything contained in clause 15 the following classes of persons shall not be eligible for being listed as employers under this Scheme namely:—

- (a) persons who are not citizens of India;
- (b) firms, one or more partners of which is or are, not citizen or citizens of India; and
- (c) companies, the majority of the sharehoders whereof are not citizens of India.

16. *Listing of dock workers*.—(1) Any dock worker, who has been in the employment of an employer to whom this Scheme applies and has worked under him for such number of days or shifts during such period as may be prescribed by the Board, shall subject to the following conditions be eligible for being listed, namely:—

- i) The number of workers of each class to be selected for listing shall not exceed the number which the Board may determine from time to time. Selection for listing shall be made as far as possible, on the basis of seniority as determined by the length of service rendered by a worker or on such other basis as the Board may determine; provided that such workers shall be medically fit and shall not be more than 60 years of age.

Provided further that a dock worker who is found medically unfit temporarily may be listed provisionally subject to the condition, that—

- (a) the ailment leading to temporary unfitness is declared as being curable within a reasonable period;
- (b) the period of provisional listing shall not exceed six months unless an extension is granted by the Board; and

- (c) if after the period or extended period of provisional listing the worker is still found unfit, his listing shall not be renewed.
- (ii) Only Indian citizens shall be eligible for being listed.

(2) Workers shall be listed under this Scheme in accordance with the following procedure, namely—

- (i) Each eligible dock worker shall apply to the Board through his employer on or before such dates as may be fixed by the Board or any Committee appointed under clause 14 for the purpose. The application shall be submitted in duplicate in the form prescribed by the Board, and shall be accompanied by three copies of passport size photograph of the worker concerned, the cost of which shall be borne by him.
- (ii) A listed employer shall not refuse to forward the application of a worker who has been in his employment and has worked under him for such number of days or shifts during such period as may be specified by the Board under sub-clause (1);

Provided that if any question arises whether or not a worker has been in the employment of his employer and has worked under him for such number of days or shifts as may be prescribed by the Board, it shall be referred to such officer, authority or Committee as the Board may specify and the decision of such officer, authority or committee, as the case may be, shall be final.

- (iii) The period for which worker of a class specified in the Schedule has served on work relatable to that class under a particular employer shall as far as possible be recorded on the basis of payment of wages made to the worker previously, either directly by the employer or through any employer's agents.
- (iv) While forwarding an application of a dock worker the employer shall if he does not recommend the application state the reasons for which he does not recommend the application.
- (v) Every worker shall pay to the Board a 'listing fee' of twenty-five paise on his name being listed.
- (vi) If the application is in order, the Board shall enter the name of the worker in the list of workers and retain one copy each of the application and the photograph for record and return the other copy of the application with a photograph affixed on it together with a photo-identity card to the worker concerned direct or to the listed employer through whom the application has been received, who shall hand over the same to the worker concerned.

(3) Notwithstanding any other provision of this Scheme, where the Board is of opinion that a dock worker has secured his listing by furnishing false information in his application or by withholding any information required there in, or where it appears that a worker has been listed improperly or incorrectly, the Board may direct the removal of his name from the list:

Provided that before giving any such direction, the Board shall give him an opportunity of showing cause why the proposed direction should not be issued.

(4) Notwithstanding any other provision of this Scheme, the Board-in-meeting may by order direct the removal permanently or for such period as may be specified in the order, of the name of listed worker who does not make himself available for work for any length of time as the Board may decide;

Provided that before giving any such direction the Board shall give such listed worker an opportunity to show cause why the proposed direction should not be issued.

(5) A copy of every order refusing to list a worker shall be communicated to him.

(6) Without prejudice to the provisions contained in sub-clause (c) of clause 12, the Board may also from time to time permit the listing of dock workers on a temporary basis through the Employment Exchange or otherwise as the Board may decide.

17. *Classification of workers in the list.*—(1) The Board shall arrange from time to time classification of workers by categories in the list and prepare and maintain a separate sub-list of worker for each of the categories or sub-categories referred to in sub-clause (2).

(2) For the time being the workers shall be divided into two broad categories as 'B' and 'C' and they shall be classified into sub-categories as specified below.

Provided that on the expiry of one year from the date of enforcement of the Scheme, a review shall be undertaken to assess the desirability of reorganizing the categories and/or improving the benefits attached to such categories.

Category 'B'

(1) Iron and Steel Handling Workers (Mechanical).

- (i) Tally-Clerk
- (ii) Maistry
- (iii) Tindal
- (iv) Carpenter
- (v) Mazdoor

(2) Mineral and Pig Iron Handling Workers.

- (i) Maistry
- (ii) Mazdoor

(3) Boat Handling Workers [Export General Cargo, Bulk Import Cargo (unhooking slings) temporarily landed cargo not handled by the Port Trust labour and import overside delivery cargo all handled in Lighters]

- (i) Maistry
- (ii) Mazdoor

(4) Deck sweeper/hatch cleaners.

- (i) Maistry
- (ii) Mazdoor

(5) Gunny Clerks.

(6) Supervisors/receipt clerks (employed by steamer agents, stevedores, shipping agents, Clearing and Forwarding Agents and Mineral Handling employers).

Category 'C'

(1) Drums loading and unloading workers and workers employed by clearing and forwarding agents.

- (i) Maistry
- (ii) Mazdoor

(2) Bulk Rockphosphate Handling workers (including filling the bags), Bulk Sulphur Handling workers (including filling the bags), Bulk Rockphosphate and Sulphur slinging workers, bagged rockphosphate and bagged sulphur handling workers.

- (i) Maistry
- (ii) Mazdoor

(3) Casuals listed by the Mineral Wagon Unloading Pool.

- (i) Maistry
- (ii) Mazdoor

(4) Goods shed workers (tarpaulins and cargo handling), casuals listed by the Iron and Steel Handling Pool and Iron and Steel Handling Labour (manual).

- (i) Maistry
- (ii) Mazdoor

(5) Sampling workers.

18. *Pool of listed workers.*—(1) Each sub-category of worker shall constitute a pool of workers.

(2) The listed workers in each group shall be allotted work by rotation as far as practicable.

(3) Casual Vacancies in categories of workers higher than mazdoors shall be filled by the panels maintain for such categories and the resultant vacancy in the lowest category shall be filled in a manner decided by the Board.

(4) The workers listed under the Scheme will not be employed unless there is a demand for a particular sub-category or group. However, if there is need for work in a particular sub-category or group, workers of the said sub-category or group shall be employed to the exclusion of outside labour which does not include ships crew.

19. *Employment in shifts.*—(1) Workers shall be employed in shifts.

(2) A worker shall not ordinarily be employed in two consecutive shifts nor shall a worker be employed in two consecutive shifts on each of two successive days. In no case shall a worker be employed in three consecutive shifts.

(3) A worker in the pool shall not be employed for more than 8 shifts in a week or 30 shifts in a month.

(4) Normally, a monthly worker shall not be employed for more than 6 shifts in a week or 27 shifts in a month but when a worker, in the pool who has not reached the maximum limit of employment defined in sub-clause(3) above is not available, a monthly worker may be employed up to 8 shifts in a week or 30 shifts in a month.

(5) In special circumstances, the Chairman may relax temporarily the restrictions under sub-clauses (3) and (4) to the extent necessary.

(6) Workers working more than one shift in a day will be entitled to the normal rate of wages for work in each shift.

(7) Where work is carried on by a gang, the allotment of workers by rotation shall be by gangs.

20. *Service records of listed Workers.*—A service record for every listed worker shall be maintained by the Administrative Body in a form as may be prescribed by the Board which shall contain among other things the complete record of disciplinary actions taken against the worker, promotion, commendation for good work, etc.

21. *Medical examination.*—If the Administrative Body deems it necessary, a worker shall undergo at the cost of the Administrative Body, a medical examination by a Medical Officer appointed by the Chairman. If the worker is found permanently unfit, his name be removed from the list.

22. *Obligations of listed employer.*—(1) Every listed employer shall be bound by the provisions of the Scheme.

(2) Every listed employer shall pay to the Board such administrative charges as may be fixed by the Board from time to time.

(3) A listed employer shall not employ a worker other than a dock worker who has been allocated to him by the Administrative Body in accordance with the provisions of clause 12.

(4) A listed employer shall in accordance with arrangements made by the Administrative Body submit all available information of his current and future labour requirements.

(5) A listed employer shall pay to the Administrative Body in such manner and at such times as the Chairman may direct the amount by way of levy, administrative charges and other charges payable under sub-clause (2) and gross wages due to the dock workers.

(6) A listed employer shall keep such records as the Board may require, and shall produce to the Board or to such persons as may be designated by the Chairman upon reasonable notice all such records and any other documents of any kind relating to listed dock workers and to the work upon which they have been employed and furnish such information relating thereto as may be set out in any notice of direction issued by or on behalf of the Board.

(7) A listed employer shall not pay a listed worker anything in cash or in excess of the wages normally and actually due to the worker.

23. *Obligations of listed worker.*—(1) Each listed worker shall be deemed to have accepted the obligations of this Scheme.

(2) A listed dock worker shall not offer himself for employment with any other employer on any day on which he is offered employment by the Administrative Body.

(3) A listed dock worker in the pool who is available for work shall not engage himself for employment under a listed employer unless he is allocated to that employer by the Administrative Body.

(4) A listed dock worker in the pool who is available for work shall carry out directions of the Administrative Body and shall—

(a) report at such call stands or control points on such days and at such times as may be specified by the Administrative Body;

(b) accept any employment in connection with dock work whether in the category or sub-category in which he has been listed or in any other category or sub-category for which he is considered suitable by the Administrative Body.

(5) A listed dock worker who is available for work when allocated by the Administrative Body for employment under a listed employer shall carry out his duties in accordance with the directions of such listed employer or his authorised representative or supervisor and the rules of the port or place where he is working.

24. *Suspension of supply of listed workers.*—If a listed employer fails to make payment due from him under clauses 12(f)(i) and 22(s) 1(i) any other amount due and payable to the Board in any other capacity or account, within such time as may be prescribed by the Administrative Body, the Administrative Body shall serve Notice on the employer to that effect that unless he pays his due within three days from the date of receipt of the Notice, the supply of listed workers to him shall be suspended on the expiry of the notice period. Thereupon, the Administrative Body shall suspend the supply of listed workers to the defaulting employer until he pays his dues.

25. *Restriction on employment.*—No person other than a listed employer shall employ any worker on dock work nor shall a listed employer engage for employment or employ a worker on dock unless that worker is a listed worker. If, however, on any occasion the Administrative Body considers it necessary to employ temporarily a worker other than a listed worker, it can do so after obtaining the prior approval of the Deputy Chairman and where this is not possible, shall report to the Deputy Chairman within 24 hours the full circumstances under which such workers were employed. The Deputy Chairman shall place before the Board-in-meeting at the earliest opportunity all such cases of temporary employment of workers other than listed workers approved by him.

26. *Chairman to evolve Schemes.*—(1) The Chairman may evolve a Scheme or Schemes of payments to the listed workers in relation to the actual output of their work. The Scheme or Schemes shall be considered by the Board in a meeting and, if adopted, shall be submitted to the Central Government for approval. Such a Scheme or Schemes shall come into force from a date which may be approved by the Central Government. Different dates may be fixed in respect of such Schemes governing different categories of listed workers.

(2) If any Scheme or Schemes evolved by the Chairman is not approved by the Board-in-meeting the Chairman shall report the matter to the Central Government forwarding, at the same time, a copy of the Scheme or Schemes for the decision of the Government. The Central Government shall consider the Scheme or Schemes and the views of the members of the Board, and take such decision as may be appropriate. The decision of the Central Government shall be binding on the Board.

(3) Notwithstanding anything contained in sub-clauses (1) and (2) the Central Government may, determine all or any of the matters referred to in the said sub-clauses on the recommendation of any body set up by it and any such decision of the Central Government shall be final and binding on the Board.

27. *Holidays.*—Each listed worker shall be entitled in a year to 5 holidays with pay at such rates as may be prescribed by the Board.

28. *Attendance allowance.*—Subject to other conditions of the Scheme a worker in the pool in 'B' category who is available for work but for whom no work is found shall be paid attendance allowance at the rate of Rs. 1.75 P.S. inclusive of dearness allowance per day for all the days during a calendar month he attended for work as directed by the Administrative Body provided that the Board may allow payment of attendance allowance at such higher rate not exceeding rupees two as it may deem necessary.

29. *Disappointment money.*—When a worker in the pool present himself for work and for any reason the work for which he has attended cannot commence or proceed and no alternative work can be found for him and he is relieved within two hours of his attending for work, he shall be entitled to the disappointment money, equal to half the wage inclusive of dearness allowance appropriate to the category to which he belongs. A worker detained for more than two hours shall be paid full time rate wages inclusive of dearness allowance.

30. *Provident Fund and Gratuity.*—The listed workers in 'B' category shall be eligible for Contributory Provident Fund and Gratuity with effect from the date the Board may fix. The Board shall frame Rules for the purpose.

31. *Standing Orders.*—The Administrative Body shall frame the draft standing orders for certification under the provisions of the Industrial Employment (Standing Orders) Act, 1946 and before submission of the same to the certifying officer, shall submit it to the Deputy Chairman who will place before the Board along with his remarks for approval.

32. *Disciplinary procedure.*—(1) Their Personnel Officer on receipt of information, whether on complaint or otherwise that a listed employer has failed to carry out the provisions of this Scheme may after investigating the matter—

(i) give him a warning in writing; or

(ii) if in his opinion, a higher penalty is merited, report the case to the Deputy Chairman:

Provided that more than one breach of the provisions of the Scheme shall in any event be reported to the Deputy Chairman.

(2) The Deputy Chairman shall then cause such further investigation be made as he may deem fit and take any of the following steps as regards that employer, that is to say, he may—

(a) censure the employer and record the censure in his record sheet; or

(b) subject to the approval of the Board and after one month's notice in writing to the employer, direct that the name of the employer shall be removed from the list of employers for such period as may be determined by the Board or permanently if the Board so determines.

(3) A listed dock worker in the pool who fails to comply with any of the provisions of the Scheme, or commits any act of indiscipline or misconduct, may be reported against in writing to the Labour Officer. The Labour Officer after investigating the matter may give him a warning in writing or suspend him for a period not exceeding seven days.

(4) Where, in a case reported to him under sub-clause (3) the Labour Officer is of opinion that the act of indiscipline or misconduct is so serious that the worker should not be allowed to work any longer, the Labour Officer may, pending investigation of the matter, suspend the worker for a period not exceeding seven days and report immediately to the Deputy Chairman, who after preliminary investigation of the matter shall pass orders thereon whether the worker should, pending final orders remain suspended or not provided that the total period of such suspension shall not exceed a period of three months.

(5) Where the Deputy Chairman comes to the decision that the order of suspension of the worker pending investigation into the charge of indiscipline or misconduct as the case may be, ought not to have been made, the worker shall be entitled to such payments from the Board in respect of the period of his suspension as the Administrative Body may certify that the worker would have received, had he not been suspended.

(6) Where in the opinion of the Labour Officer, higher punishment than that provided in sub-clause (3) is merited, he shall report the case to the Deputy Chairman.

(7) On receipt of the written report from the Labour Officer under sub-clause (6) or from the Administrative Body that a listed dock worker in the pool has failed to comply with any of the provision of the Scheme or has committed an act of indiscipline or misconduct or has consistently failed to produce the standard output or has violated the provisions of the Scheme more than once or has been inefficient in any other manner the Deputy Chairman may make or cause to be made such further investigation as he may deem fit, and thereafter take any of the following steps, as regards the worker concerned, that is to say, he may impose any of the following penalties:

(a) give him a warning in writing;

(b) suspend him for a period not exceeding 3 months;

(c) terminate his services after giving 14 days notice or

(d) dismiss him.

(8) Before any action is taken under this clause the person concerned shall be given an opportunity to show cause why the proposed action should not be taken against him. A copy of the final order shall also be communicated to the persons concerned.

(9) The Administrative Body shall be informed simultaneously about the action taken under this clause.

33. *Appeals by employers.*—(1) A listed employer who is aggrieved by an order under clause 32 may appeal—

(a) to the Deputy Chairman, if the order was made by the Personnel Officer, or

(b) to the Chairman if the order was made by the Deputy Chairman.

(2) A dock employer who has been refused listing under clause 15 may appeal to the Central Government.

(3) Every appeal referred to in sub-clauses (1) and (2) shall be in writing and preferred within 14 days of the order appealed against and the order passed on such appeal shall be final.

Provided that the appellate authority may, for reasons to be recorded, admit an appeal preferred after the expiry of 14 days.

34. *Appeals by Workers.*—(1) A listed worker in the pool, who is aggrieved by an order passed by the Labour Officer under clause 32(3) may appeal to the Deputy Chairman, and when the original order has been passed by the Deputy Chairman the appeal can be preferred to the Chairman.

(2) A dock worker, who has been refused listing under clause 16 may appeal to the Board.

(3) Every appeal under sub-clauses (1) and (2) shall be in writing and preferred within 14 days of the receipt of the order appealed against and the order passed on such appeal shall be final:

Provided that the appellate authority may for reasons to be recorded, admit an appeal preferred after the expiry of 14 days.

(4) An appellant shall not be entitled to be represented by a legal practitioner before the appellate authority but he shall be entitled to be represented by a representative of the registered trade union of which he is a member or by a listed worker.

35. *Application of the Scheme to Visakhapatnam Port Trust and Food Departments.*—Notwithstanding the non-application of the Scheme to the dock workers employed by Visakhapatnam Port Trust and Food Department so long as they are not listed here under, the said employers shall not draw their additional requirement of workers from any source other than the pool of listed workers and for this purpose the obligations of listed employers as laid down in this Scheme *mutatis mutandis* apply to them.

36. *Penalties.*—A contravention of clause 25 shall be punishable with fine not exceeding two hundred rupees in respect of a first contravention or five hundred rupees in respect of any subsequent contravention.

SCHEDULE

Classes of dock workers to whom the Scheme applies:

Category 'B'

1. Iron and Steel Handling Workers (Mechanical)

- (i) Tally Clerk
- (ii) Maistry
- (iii) Tindal
- (iv) Carpenter
- (v) Mazdoor

2. Mineral and Pig Iron Handling Workers

- (i) Maistry
- (ii) Mazdoor

3. Boat Handling Workers [Export General Cargo Bulk Import Cargo (unhooking slings) temporarily landed cargo not handled by the Port Trust labour and import overside delivery cargo all handled in lighters].

- (i) Maistry
- (ii) Mazdoor

4. Dock sweepers/hatch cleaners

- (i) Maistry
- (ii) Mazdoor

5. Gunny Clerks.

6. Supervisors/receipt clerks (employed by steamer agents, stevedores, shipping agents, Clearing and Forwarding Agents and Mineral Handling employers).

Category 'C'

1. Drums loading and unloading workers and workers employed by clearing and forwarding agents

- (i) Maistry
- (ii) Mazdoor

2. Bulk Rockphosphate Handling workers (including filling the bags), Bulk Sulphur Handling workers (including filling the bags), Bulk Rockphosphate and Sulphur slinging workers, bagged rockphosphate and bagged sulphur handling workers.

(i) Maistry

(ii) Mazdoor

3. Casuals listed by the Mineral Wagon Unloading Pool.

(i) Maistry

(ii) Mazdoor

4. Goods shed workers (tarpaulins and cargo handling), casuals listed by the Iron and Steel Handling Pool and Iron and Steel Handling labour (manual).

(i) Maistry

(ii) Mazdoor

5. Sampling workers.

[No. 56/11/68-Fac. II.]

New Delhi, the 20th August 1968

S.O. 2930.—In exercise of the powers conferred by sub-sections (3) and (4) of section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby appoints the following persons as members of the Mormugao Dock Labour Board, and nominates Shri B. K. Advani as Chairman thereof, namely:—

Members representing the Central Government

- (1) Shri B. K. Advani, Officiating Chairman, Mormugao Port Trust, Mormugao.
- (2) The Deputy Chairman, Mormugao Dock Labour Board, Mormugao.
- (3) The Labour Commissioner, Government of Goa, Panjim.
- (4) The Assistant Labour Commissioner (Central), Vasco-di-Gama.

Members representing the Dock-Workers

(1) Shri Mohan Neir	·	·	·	·	Representatives of the Goa Dock Labour Union.
(2) Shri Rajendra Kumar Singh	·	·	·	·	Representative of the Mormugao Port, Dock and Transport Workers' Union.
(3) Shri Geraldo Pereira	·	·	·	·	Representative of the Transport & Dock Workers' Union.
(4) Shri Sayed Gauk Pir	·	·	·	·	·

Members representing the employers of dock workers and shipping companies

(1) Shri M. da Lima Loitaq	·	·	·	·	Representatives of the Mormugao Stevedores' Association.
(2) Shri V. S. Manorkar	·	·	·	·	Representative of the Indian National Steamship Owners' Association.
(3) Shri A. V. Prabhu	·	·	·	·	·
(4) Shri J. H. Thakker	·	·	·	·	Representative of the Mormugao Steamship Agents' Association.

[No. 57/11/67-Fac. II].

ORDERS

New Delhi, the 14th August 1968

S.O. 2931.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs Ambassador Steamships Private Limited, Cochin and their workmen in respect of the matter specified in the Schedule hereto annexed;

And whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10, of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby constitutes an Industrial Tribunal of which Shri M. Tajammal Hussain shall be the Presiding Officer, with headquarters at Madras and refers the said dispute for adjudication to the said Tribunal.

SCHEDULE

Whether the management of Messrs Ambassador Steamships Private Limited, Steamer Agents, Cochin-3 was justified in denying employment to Shri Donald Clements, Assistant Supervisor on board the ships from the 23rd September, 1967 ? If not, to what relief is the workman entitled ?

[No. 29(28)/68-LRIII.]

S. O. 2932.—Whereas the employers in relation to the Bombay Port Trust, Bombay and their workmen represented by the Bombay Port Trust General Workers' Union, Bombay have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed;

And whereas, the Central Government is satisfied that the persons applying represent the majority of each party;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Bombay constituted under section 7A of the said Act.

SCHEDULE

Whether the demand that Sarvashri Ismail Hassan Kirkire, Ali Khot Saheb and Chandrakant S. Sawant, Lascars, Port Department, Flotilla, who had volunteered to be appointed as Stokers against the vacancies caused by the termination of services of Pakistan National's should be placed on the seniority list of stokers below the substitute stokers from the 'A' list, who were absorbed in the vacancies of stoker but above the substitute stokers from the 'B' list, who were also absorbed in the vacancies of stoker, is justified ? If so, what should be their respective position in the seniority list of stokers in the said Department ?

[No. 28(62)/68-LR III.]

S.O. 2933.—Whereas the employers in relation to the Bombay Port Trust, Bombay and their workmen represented by the Bombay Port Trust General Workers' Union, Bombay have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed ;

And whereas, the Central Government is satisfied that the persons applying represent the majority of each party;

Now, therefore in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Bombay, constituted under section 7A of the said Act.

SCHEDULE

Whether the demand that the staff in the following categories of the Marine Oil Terminal establishment working at Butcher Island should not be rotated at regular intervals with the staff of the corresponding categories of that establishment working at Trombay Manifold is justified ?

Electrician, Grade I and Grade II,

Wireman; and

Assistant Wireman.

[No. 28(63)/68-LR III.]

C. RAMDAS, Under Secy.

(Department of Labour and Employment)

New Delhi, the 14th August 1968

S.O. 2934.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under Section 33A of the said Act from Shri Sachida Singh C/o Coal Workers' Union, Bhurkunda Branch, Post Office Bhurkunda, Hazaribagh, (Bihar), which was received by the Central Government on the 8th August, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL COURT AT DHANBAD

In the matter of a complaint under section 33A of the Industrial Disputes Act, 1947.

COMPLAINT NO. 3 OF 1967

(Arising out of present Reference No. 62 of 1967)

PARTIES:

Shri Sachida Singh, C/o Coal Workers Union, Bhurkunda Branch, P.O. Bhurkunda, Hazaribagh, (Bihar).—*Complainant*

Vs.

Deputy Supdt. of Collieries, Sayal 'D' Colliery, N.C.D.C. Ltd., P.O. Sayal, Hazaribagh, (Bihar).—*Opp. Party*

PRESENT :

Shri Kamla Sahai, Presiding Officer.

APPEARANCES :

For the Complainant: Shri Braj Kishore Prasad, Advocate.

For the Opposite Party: Shri Jagdish Prasad, Advocate.

Dhanbad, dated the 31st July, 1968

AWARD

Shri Sachida Singh was employed as a Shotfirer by the National Coal Development Corporation Limited (shortly called the N.C.D.C.). He filed this complaint before this Tribunal on the 11th October, 1965. It was registered as Complaint No. 18 of 1965. By the Ministry's Order No. 8/25/67-LRII dated the 19th September, 1967, it was transferred to the Jabalpur Tribunal, where it was numbered as Complaint No. 32 of 1967. The Complaint has now been re-transferred to this Tribunal under the Ministry's order No. 8/25/67-LRII, dated 24-11-67. It has now been numbered as Complaint No. 3 of 1967.

2. The complainant's case is that he is a permanent employee of the N.C.D.C. Ltd., at Sayal 'D' Colliery and that he is an active member of the Coal Workers' Union. He was charge-sheeted by the Deputy Supdt. of Collieries, Sayal 'D' Colliery, for alleged negligence of duty and misconduct. His case further is that a so-called enquiry was held by an Enquiry Committee constituted for the purpose and that, as a result of its findings, the Deputy Supdt. of collieries dismissed him from service with effect from 21-9-1965. He has alleged that principles of natural justice were not observed in the course of enquiry, that the opposite party has not paid him one month wages as requires under the proviso to section 33(2)(b) of the Industrial Disputes Act and that the N.C.D.C. Ltd., did not file an application for approval of his dismissal under section 33(2)(b) as it should have done. He has stated that an application for approval was necessary because of the pendency of reference No. 105 of 1965 (Order No. 2/70/64-LRII).

3. The allegations against Sachida Singh are that, while he was on duty in the 1st shift on the 12th March, 1965 as a shot firer, a bunch of electric detonators was found to have been loaded with coal on the running conveyor belt of the 14th West Level District in Semana incline in which he was on duty. Shri A. K. Dutta, chargeman, was making inspection and he discovered the detonators loaded on the running belt. He immediately picked them up and sent them to the colliery Manager, Shri A. N. Singh, through Shri Jhaman Kahar, one of the belt cleaners. After a few minutes, Shri Sachida Singh came to the Manager, Shri A. N. Singh and told him that he did not know how his detonators were loaded on the belt and that those detonators were with him (the Manager,

He then requested the Manager to make over the detonators to him (Sachida Singh) and the Manager accordingly handed them over to him. In the charge which was framed against Sachida Singh, it was stated:

"Had the detonators not been detected on the conveyor by another person, the consequences might have been very serious in as much as the machinery and belt conveyor might have been damaged due to blast of detonators and the life of the persons in or about would have also been in danger. Such throwing of explosive materials on the belt conveyor indicates utter negligence on your part in performance of your duty and is also fraught with danger to human lives and property and amounts to serious misconduct on your part".

4. The case of the N.C.D.C. Ltd., is that an enquiry committee was regularly constituted, that it held an enquiry into the chargesheet in accordance with natural justice and that it found the alleged delinquent to be guilty of the charge framed against him. On the basis of its findings, the Deputy Superintendent of Collieries has dismissed him from service.

5. The case of the Corporation further is that Sachida Singh was not a workman concerned in the dispute which led to reference No. 105 of 1965. On this ground, Shri Jagdish Prasad, Advocate, has taken the preliminary objection on behalf of the Corporation that this complaint is not legally maintainable.

6. I consider it proper to decide the preliminary objection. I had a similar point to decide in Shri Tej Bahadur, Watchman, Jamadoba Colliery *versus* Tata Iron and Steel Co. Ltd., Jamadoba (Complaint No. 15 of 1966). In my award in that case, I referred to the decisions of the Supreme Court in New India Motors (P) Ltd, *versus* Morris (K.T.)—1960 (I) L.L.J. 551 ; Digwadih Colliery *versus* Ramji Singh—1964 (II) L.L.J. 143 and Tata Iron & Steel Co. Ltd., *versus* D. R. Singh—1965 (II) L.L.J. 122. All these three decisions were considered by the Patna High Court in New India Sugar Mills Ltd., Darbhanga *versus* Krishnaballabh Jha and others—1967 (II L.L.J. 210. In the last-mentioned case, their Lordships have laid down:—

".....there must be some common feature in the nature of the dispute in the two cases which should serve as a connecting link thereby rendering the workmen in the later case also workmen concerned in the dispute in the earlier case. The mere fact that the same union had taken up the cause of the two workmen, or else that by virtue of S. 18(3)(d) of the Act all workmen may be bound by the award in the earlier disputes, may not suffice, unless there is some other common feature in the two disputes as mentioned above".

7. The workman concerned in reference No. 105 of 1965 which was subsequently registered in this Tribunal as Reference No. 62 of 1967 was Shri Ramendra Kumar. The dispute was described in the schedule given in the reference in that case as follows:—

SCHEDULE

"Whether the Services of Shri Ramendra Kumar, Shotfirer, were terminated, by the management of the Sayal 'D' Colliery of the National Coal Development Corporation Limited, for unsatisfactory work during his probationary period and if not, to what relief is the workman entitled?"

8. Sachida Singh, the workman concerned in this case, has been a permanent employee of the N.C.D.C. There is no question of his service having been terminated during probationary period. He is alleged to have been guilty of serious negligence in letting detonators entrusted to him to go with coal on a running conveyor belt. There was no question in reference No. 62 of 1967 about such negligence or misconduct. All that Mr. Braj Kishore Prasad, Advocate, who appeared for the workman, was able to urge was that Ramendra Kumar was a shotfirer and so was Sachida Singh. I do not think that this is a sufficient link or a common feature which can be said to make Sachida Singh concerned in the principle which could be laid down in reference No. 62 of 1967. Besides, as I have already pointed out, Sri Ramendra Kumar was said to be a probationer whereas Sachida Singh was admittedly a permanent employee.

9. In the circumstances mentioned above, I hold that Sri Sachida Singh was not concerned in the dispute which arose for adjudication in reference No. 62 of 1967. I, therefore, agree that this complaint is not legally maintainable. It is, therefore rejected. I give my award accordingly Let it be submitted to the Central Government.

(Sd.) KAMLA SABAI,
Presiding Officer

[No. 2/70/64-LR. II.]

New Delhi, the 17th August 1968

S.O. 2935.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the Industrial dispute between the employers in relation to the Ena Colliery of Messrs North West Coal Company Limited, Post Office Dhansar (Dhanbad) and their workmen, which was received by the Central Government on the 7th August, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT NO. 1, DHANBAD.

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 6 OF 1968

PARTIES :

Employers in relation to Ena Colliery of M/s. North West Coal Co. Ltd., P.O. Dhansar
District Dhanbad.

Vs.

Their Workmen.

PRESENT :

Shri Kamla Sahai, Presiding Officer.

APPEARANCES :

For the Employers—Shri S. S. Mukherjee, Advocate,

For the Workmen—Shri B. Lal, Advocate,

STATE BIHAR

INDUSTRY—Coal.

Dhanbad, dated the 2nd August, 1968.

AWARD

The Central Government has, by its order No. 2/121/67-LRII dated the 16th January, 1968, made this reference to this Tribunal for adjudication of the dispute which is mentioned in the schedule below :

SCHEDULE

“Whether the management of Ena Colliery of Messrs North West Coal Company Limited Post Office Dhansar, (Dhanbad) were justified in terminating the services of their workman Shri Mani Raj Nonia, Dusting Mazdoor, with effect from the 12th July, 1967 ? If not, to what relief is the workman entitled ?”

2. The parties have entered into a compromise and they have just filed a compromise petition which has been signed by the Advocates of the parties. Officials of the Company and the concerned workmen are also present in Court.

3. The compromise substantially is that Mani Raj Nonia would be reinstated and that for that purpose he should present himself in the colliery on or before the 5th August, 1968. For the period from the 12th July, 1967 up to the date of his reinstatement, he would be treated as being on leave without wages for the purpose of continuity of his service. In my opinion, the compromise is fair. I accept it.

4. The reference is disposed of in terms of the compromise petition which will form part of the award. Let the award to be submitted to the Central Government.

Sd/- KAMLA SAHAI,
President Officer.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM
LABOUR COURT NO. 1, DHANBAD

REFERENCE NO. 6 OF 1968.

Employers in relation to Ena Colliery.

AND

Their workmen.

The humble petition on behalf of the party above named. Most respectfully sheweth :

(1) That without prejudice to the respective contention of the parties contained in their written statement the dispute has been amicably settled on following grounds :

(a) That Shri Mani Raj Nonia, the workman concerned will be reinstated in his original job of a Dusting Mazdoor. He must report for his duty latest by 5-8-1968.

(b) That the period from 12-7-1967 to the date of his actual reinstatement will be considered as if he was on leave without wages for the continuity of his service only.

(c) That this settlement is effected as a special case and it will not create a precedence in similar other cases.

(d) That the parties will bear the own respective cost of the proceeding.

It is therefore prayed that the present settlement may kindly be recorded and award may be passed in terms thereof.

For Workmen :

(Sd). B. LAL,
Advocate,

Dated 2nd August, 1968.

For Employers :

(Sd.) S. S. MUKHERJEE,
Advocate

[No. 2/121/67-LR. II.]

ORDERS

New Delhi, the 14th August 1968

S.O.2936.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Sanctoria Hospital of Messrs. Bengal Coal Company Limited Post-Office Dishergarh, District Burdwan, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And Whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, Therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the 'Central Government Industrial Tribunal Calcutta constituted under section 7A of the said Act.'

SCHEDULE

Whether the management of the Sanctoria Hospital owned by Messrs Bengal Coal Company Limited, Post Office Dishergarh, District Burdwan was justified in dismissing Miss. Madhur Mazumdar, female Nurse from service with effect from the 1st of June 1968. If not, to what relief is she entitled?

[No. 6/67/68-LR. II.]

New Delhi, the 17th August 1968

S.O. 2937.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Khas Jeenagora Colliery of Messrs Khas Jeenagora Coal Company Private Limited, Post Office, Khas Jeenagora, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal (No. 3), Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Khas Jeenagora Colliery, Post Office Khas Jeenagora, District Dhanbad, is justified in stopping Sarvashri Mahabir Mahato, Bhiman Mahato, Sibu Bhuria, Keso Bhuria and Shivlal Kewat, from work with effect from the 25th December, 1967 ? If not, to what relief are these workmen entitled ?

[No. 2/126/68-LRIL.]

BALWANT SINGH, Under Secy.

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

New Delhi, the 14th August, 1968.

S.O. 2938—In exercise of the powers conferred by Sub-Section (I) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (No. 44 of 1954), the Central Government hereby appoints Shri S. K. Soni as Assistant Settlement Officer for the purpose of performing the functions assigned to such officers by or under the said Act with effect from 1st July, 1968.

[No. 8(3)AGZ/67.]

A. G. VASWANI,
Settlement Commissioner(A) & Ex-
Officio Under Secy.

MINISTRY OF PETROLEUM AND CHEMICALS

New Delhi, the 27th July, 1968

S.O. 2939.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum between Barauni Refinery in Bihar State and Kanpur in Uttar Pradesh State, pipeline should be laid by the Indian Oil Corporation Limited and that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land of village Kurhwa of Tahsil Kanpur, District Kanpur described in the schedule annexed hereto.

2. Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of user the rein.

3. Any person interested in the said land may within 21 days from the date of this notification object to the laying of the pipelines under the land to the Competent Authority, Post Box 58, Allahabad. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

SCHEDULE

STATE—Uttar Pradesh

DISTRICT : Kanpur

TAHSIL : Kanpur

Village	Survey No.	Extent B-B-B-
Kurhwa	922 A	0-13-4

[No. 28(5)/68-IOC(i)]

S.O. 2940.—Whereas it appears to the Central Government that it is necessary in the Public interest that for transport of petroleum between Barauni Refinery in Bihar State and Kanpur in Uttar Pradesh State Pipelines should be laid by the Indian Oil Corporation Limited and that for the purpose of laying such pipeline it is necessary to acquire the Right of User in Land of tahsil Chail, District Allahabad in Uttar Pradesh State described in the schedule annexed hereto.

2. Now therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority at Post Box 58, Allahabad. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

STATE : Uttar Pradesh

DISTRICT : Allahabad

TAHSIL : Chail

Village	Survey No.	Extent B-B-B
1. Saiyad Sarawan	2023 2024 2121 2125 3440	0-1-15 0-2-10 0-0-5 0-0-19 0-3-10
2. Manauri	114 185	0-0-10 0-2-18
3. Kosawan	50 51 52	0-0-5 0-13-0 0-0-10
4. Kasari Masari	1199	0-0-5

[No. 28(5)/68-IOC (ii).]

S.O. 2941.—whereas it appears to the Central Government that it is necessary in the public interest that for transport of petroleum between Barauni Refinery in Bihar State and Kanpur in Uttar Pradesh State pipelines should be laid by the Indian Oil Corporation Ltd., and that for the purpose of laying such pipeline it is necessary to acquire the Right of User in Land of Tahsil Mirzapur, District Mirzapur in Uttar Pradesh State described in the schedule annexed hereto.

2. Now, therefore, in exercise of the powers conferred by sub-section (i) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of uses therein.

3. Any person interested in the said land may within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Post Box 58, Allahabad. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

STATE : Uttar Pradesh

DISTRICT : Mirzapur

TAHSIL : Mirzapur

Village	Survey No.	Extent B-B-B
Basahi	229 276 282/3 284/1 287 290/1 291 298/1	0-0-10 0-0-10 0-1-5 0-2-10 0-2-10 0-2-5 0-2-0 0-2-0

[No. 28(5)/68-IOC-(iii).]

P. P. GUPTA, Under Secy.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE, M.P. AND VIDARBHA

CENTRAL EXCISES

Nagpur, the 9th August 1968

S.O. 2942.—This Collectorate Notification No. 4/1968-Central Excise, dated the 1st June, 1968 is hereby cancelled.

[No. 5/1968.]

VIPIN MANEKLAL, Collector.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE, POONA

CENTRAL EXCISES

Poona, the 17th July 1968.

S.O. 2943.—In exercise of the powers conferred on me under Rule 173-H of the Central Excise Rules, 1944, I hereby prescribe the procedures as mentioned in Annexure A appended which shall be followed by every assessee working under the Self Removal Procedure as laid down in Chapter VII-A of the Central Excise Rules, 1944, for retaining in or bringing into his factory or warehouse, the goods on which duty has been paid, for the purposes mentioned below:

- (i) Goods received/retained for use in the manufacture of other goods in the factory, or
- (ii) goods returned to the factory for being remade, refined, reconditioned, repaired or subjected to any similar process in the factory; or
- (iii) after payment of duty the goods cannot immediately be removed from the factory due to unforeseen circumstances beyond the control of the assessee, such as non-availability of railway wagon, breakdown of carriers etc.; or
- (iv) when goods cleared on payment of duty are brought back into the factory due to sudden suspension of booking on railways; or
- (v) goods retained in or brought into the factory for test, studying designs, method of construction etc.; or
- (vi) goods are required to be stored in the factory for retail sale or for issue as complimentary gifts or for repacking into packages so as to suit the requirements of individual customers.

ANNEXURE A

- (i) Goods received/retained for use in the manufacture of other goods in the factory—

1. The assessee should notify to the Superintendent of Central Excise having jurisdiction over the factory immediately after the goods are received or to be retained into the factory.
2. The goods should be presented for inspection/examination by the Central Excise officer deputed for the purpose, with the bill of entry (in respect of imported excisable goods) or A.R.I or gate pass under Self Removal Procedure in respect of indigenous excisable goods.

3. The storage place should be separate and distinct from the main factory and approved store-room for non-duty paid goods and shall be declared to and approved by the Superintendent, Central Excise concerned.

4. The assessee should maintain a record in the following proforma showing details of the goods retained/received, disposed of etc.

Date	Description of goods	Opening balance	Receipts/Retained		Total
			A.R. 1/Bill of entry No. and date or gate- pass No. and date	Quantity	
1	2	3	4	5	6

Signature of manufacturer.	Signature of C. Ex. officer.	Issues.			Closing balance	Remarks.
		No. & date of gate-pass/Dly. note etc.	Quantity	10		
7	8	9	11	12		

5. The stocks and account shall be open to inspection by any Central Excise officer at all times.

(ii) Goods returned to the factory for being remade, refined, reconditioned, repaired or subjected to any similar process in the factory:—

(a) When duty paid goods except (i) Electric Fans, Electric Batteries, Electric Bulbs, Tyres and Tubes, Internal Combustion Engines, Electric Motors, W.R. Sets, Refrigerating and Air Conditioning appliances, Cement, Woollen Fabrics, Sugar are returned for being remade, refined, reconditioned or subjected to any similar process in the factory:—

(1) The assessee must notify to the Superintendent of Central Excise having jurisdiction over his factory immediately after receipt of the goods into the factory. The goods should be stored separately till these are inspected by the Central Excise Officer.

(2) The goods shall be presented for inspection and if necessary for sampling by the Central Excise Officer deputed for the purpose, who will examine and identify the duty paid goods with the relative clearance documents before they are taken into stock. For this purpose the said Central Excise Officer will verify that the goods as originally issued from the factory, have not been tampered with or made use of in any way and the smallest packages meant for retail sale, except those few which may have been opened for sampling are intact and unopened.

Collateral evidence available with the assessee e.g., correspondence with the buyer regarding rejection of such goods, reports about assessment of damage by assessors, etc. shall also be produced before the Central Excise Officer to satisfy him about the bonafides of such re-entry. Where some or all of the unit packages had been opened before return of the consignments, identity of the goods returned shall also be established with reference to such collateral evidence. Wherever there are markings on containers which are described either in the clearance documents or in other accounts of the assessee all such records shall be produced before the Central Excise Officer to facilitate identification.

(3) A detailed account of the returned goods and the process to which they are subjected after their return to the factory shall be kept by the assessee in the R.G. 1 prescribed under Chapter VII-A of the Central Excise Rules, separate pages being set apart in the said records for this purpose.

(4) The record so maintained shall be open to inspection by any Central Excise Officer at all times.

(b) Damaged Sugar/Cement brought back to the Factory for Refining, Reprocessing etc:—

(1) The assessee shall inform the Superintendent of Central Excise having jurisdiction over the factory immediately after receipt of the consignment into the factory. The consignment should be stored separately till it is inspected by the Central Excise officer.

(2) The Central Excise Officer deputed for the purpose will weigh the consignment so received into the factory, draw representative sample, prepare the usual test memo and forward the samples to the Chemical Examiner for ascertaining the recoverable Sugar/Cement.

(3) On receipt of the test report from the Chemical Examiner the Asstt. Collector will intimate to the Superintendent of Central Excise concerned the quantity of goods permitted to be delivered free of duty from the factory against the damaged goods brought into the factory.

(4) The Superintendent of Central Excise concerned on receipt of orders from the Asstt. Collector will apprise the assessee of the result of the chemical analysis and will permit a quantity equivalent to the recoverable quantity as determined by the Chemical Examiner without payment of duty.

(5) The assessee shall maintain a detailed account of the damaged goods received and the processes to which the goods are subjected at the factory in the following form:

Date of entry of damaged Sugar/Cement	No. of packages	Description of goods	S. No. of packages	Total Qty. entered	Processes to which subjected
1	2	3	4	5	6
Quantity recoverable	Permissible qty. for delivery free of duty against the Qty. in column 7 (as intimated by Supdt. Central Excise)	Date of reissue	Quantity issued against Col. 8	Signature of licensee	Balance
7	8	9	10	11	12
					13

(c) Electric Batteries, Fans and Electric Bulbs, Tyres, Tubes, Internal Combustion Engines, Electric Motors, W.R. Sets, Refrigerating and Air-Conditioning Appliances brought into the factory for repair, reconditioning, etc:—

(1) The assessee must notify to the Superintendent of Central Excise having jurisdiction over the factory immediately after receipt of the goods into the factory. The goods should be stored separately, till these are inspected by the Central Excise Officer.

(2) The goods so received shall be stored in separate place specified for the purpose of repairing, reconditioning etc., shall as far as possible be undertaken in a separate section as distinct from manufacturing section. Where it is done in the manufacturing section itself, prior intimation should be given to the Supdt. of Central Excise concerned.

(3) The assessee shall pay duty on excisable parts used for repairing, reconditioning etc. in the usual manner at the time of removal of excisable parts before utilising them for repairs.

(4) All removal of repaired goods shall take place under cover of separate gate passes maintained for this purpose.

(5) A detailed account of the returned goods shall be kept by the assessee in the following form:

Receipt				
Date	Description of goods received	Brand name with identifying marks as far as possible	Quantity or number received	Signature of the manufacturer
1	2	3	4	5
<hr/>				
<hr/>				
<hr/>				
Details of repairs/reconditioning			Issues	
Description of excisable parts used	Amount of duty paid with No. & date of gate pass or A.R.I		Date of reissue	G.P. No. & date
6	7	8	9	10
<hr/>				
<hr/>				
<hr/>				

(6) The manufacturer shall remove the goods after repair/reconditioning within 1 month of the date of receipt into the factory; but the time limit shall be extended by the Supdt. of Central Excise to 3 months subject to the condition that the No. of such batteries/fans so brought into the factory for repair/reconditioning does not exceed at any one time 1 per cent of the annual production of the assessee. This limit shall be relaxed to 5 per cent in the case of Electric Motors, Electric Batteries and Electric Fans. In case of Refrigerating and Air Conditioning Appliances, Electric Motors, I.C. Engines, Electric Fans and Electric Batteries, the normal period for removal will be 3 months instead of 1 month. In deserving cases extension upto 9 months will be granted by the Superintendent and beyond that period by the Collector.

(d) Goods returned to the factory for being remade, refined, reconditioned etc. under the provisions of rules 97, 97-A, 100-A etc.

The assessee should follow the procedure laid down in the respective rules and as prescribed from time to time and he should maintain an account of the goods so received, the process to which subjected and removed in the following form:—

Account of duty paid goods received for processing and repairs.

(Rules 97, 97-A and 173-H).

Name and address of the factory:

Licence No.

Receipts				Details of processing/repairs				
Date of reentry.	From whom received	Description of goods.	Brand Name with received identifying marks or number if any.	Qty.	Signature of assessee or agent	Qty. recovered after reprocessing.	Description of excisable components used if any.	Amount of duty paid on the components with No. & date of gate pass.
1	2	3	4	5	6	7	8	9

Issues				Signature of the assessee or his agent	Refund granted if any, of the duty
Date	No. & date of gatepass	Quantity	Remarks		
10	11	12	13	14	15

NOTE :—In the case of damaged sugar/cement, if the procedure of duty-free clearance on quantity to quantity basis is followed, Col. 7 should be amended to read "Permissible Quantity for delivery free of duty or intimated by the Central Excise Officer".

(ii) After payment of duty the goods cannot immediately be removed from the factory due to unforeseen circumstances beyond the assessee's control such as non-availability of Railway wagon or the breakdown of carriers :—

(1) The place in the factory where such duty paid goods are to be stored shall be duly declared and approved by the officer competent to issue or renew the manufacturing licence.

(2) The storage place should be separate and distinct from all the parts of the premises forming the manufactory and approved store rooms for non-duty paid goods.

(3) The assessee should intimate to the Supdt. of Central Excise having jurisdiction over the factory as soon as possible the reasons for not removing the duty paid goods from the factory.

(4) The manufacturer shall keep an account of all receipts issues and balance of duty paid goods in the following form :—

Date	Description of goods	Opening balance	Receipts		Total
			Gate Pass No. & date	Quantity	
I	2	3	4	5	6

Issue		Closing balance	Signature of licensee	Signature of Central Excise Officer		
No. and date of Gate passes	Qty			7	8	9

The stocks and accounts shall be open to inspecting by any Central Excise Officers at all reasonable times.

(5) All issues from the duty paid premises shall take place under gate passes.

(iv) Goods cleared on payment of duty brought back into factory due to sudden suspension of booking on Railways :—

(1) The manufacturer shall give such notice to the Supdt. of Central Excise concerned as can reasonably be accommodated after the goods are received into the factory.

(2) The goods shall be presented to the Central Excise Officer deputed for the purpose who will identify them with clearing documents like A.R.I.s., gate passes (under Self Removal Procedure.)

(3) The goods shall be stored separately in a place distant from the main premises forming the manufactory and approved store room for non-duty paid goods, and stock cared superscribed "re-entered goods" showing—

1. Date of Receipt.
2. Quantity received.
3. No. and date of clearance documents.
4. Date of re-issue, and
5. Quantity issued.

should be maintained to distinguish them from other goods, if any,

(4) All copies of original gate passes under which the goods were first cleared, should be endorsed when the goods are received back in the factory giving time and date. When the goods are cleared again, suitable entry should be made on these gate passes.

(v) Goods brought into the factory for test or for studying designs of method of construction etc.

(1) The assessee shall notify to the Superintendent of Central Excise concerned immediately after the samples of duty paid excisable goods are received in the factory. The goods should be stored separately till these are inspected by the Central Excise officer.

(2) The goods shall be presented for inspection if necessary for sampling by the Central Excise officer.

(3) The assessee shall keep a simple account of the receipt and disposal of such goods. This account shall be open for inspection by any Central Excise Officer at all times.

(vi) Goods required to be stored in the factory premises for retail sale or for issue as complimentary gifts or repacking into packages so as to suit the requirements of individual customers.

(i) Where the assessee has a retail shop open to the public it should as far as possible be located away from the factory premises and in any case physically segregated from the factory premises, there being no entrance to the retail shop from inside the licensed premises.

(2) Where the assessee wants to store some duty paid goods for retail sale to factory employees only or issue as complimentary gifts, he should normally arrange for storage of such goods outside the licensed premises. However, any assessee having no additional storage place outside the licensed premises for storing duty paid goods he may be permitted to store the goods in a separate room/place situated within the factory premises subject to the following conditions.

(a) The separate room/place where duty paid goods are to be stored shall be duly declared and approved by the licensing authority concerned, prior to storage therein.

(b) The room or place shall be segregated from the rest of the licensed premises by effectively closing all entrances into it except one communicating only with the open space outside the main factory building and this storage place shall be capable of being securely locked.

(c) No duty paid goods shall be stored for this purpose elsewhere in the licensed premises except in such approved store room/place.

(d) All issues for the retail store must be in accordance with the usual procedure for clearance on payment of duty.

(e) Separate gate passes under Rule 52-A must be issued for each lot of duty paid goods at the time of delivery. One gate pass book should be exclusively used for this purpose. No count-

(e) Separate gate passes under Rule 52-A must be issued for each lot of duty paid goods at the time of delivery. One gate pass book should be exclusively used for this purpose. No countersignature of the Central Excise Officer on the gate passes will be necessary on the gate passes covering such issue.

(f) The assessee should maintain an account of receipt issues and balance in the retail store, in the form given below :—

Date	Description of goods	Opening balance	Receipts			Total
			G.P. No. & date	Quantity	5	
1	2	3	4	5	6	

Issues		Quantity	Closing balance	Signature of licensee	Remarks
No. & date of gate passes	7	8	9	10	11

(g) The accounts so maintained will be open for inspection by any Central Excise Officer at all times.

S.O. 2944.—In exercise of the powers conferred on me by Rule 173C(1) of Central Excise Rules, 1944, I hereby prescribe a Form of Price list which shall be filed in quadruplicate for each quarter ending March, June, September and December of every year by every assessee, who is governed by the Self Removal Procedure as laid down in Chapter VII-A of the Central Excise Rules, 1944 and who produces, manufactures or warehouses excisable goods which are chargeable with duty at a rate depending on the value of the goods, to the *Superintendent of Central Excise having jurisdiction over his factory or warehouse* well in advance of the commencement of the quarter in question. If there is any alteration and modification in the prices or change in the mode of sale from the stage of clearance from the factory to the whole-sale dealers / the consumers, he shall file a fresh price list in the prescribed form in quadruplicate or communicate an amendment to the list already filed and approved by the proper officer, well before giving effect to such alteration, modification or change in the mode of sale. If there is no change whatsoever, in the price list already filed for the previous quarter and approved by the proper officer, he shall communicate the fact to the proper officer also, well in advance, before the beginning of the relevant quarter.

FORM OF PRICE LIST

Price list of M/s. _____ holder of L. 4 No. _____ in respect of _____ (mentioned here name of excisable goods) for the quarter ending _____ March/June/September/December, 196 _____.

S. No.	Full description of excisable goods	Unit of sale	Quantity or No. packed in such unit
1	2	3	4

Price charged by the manufacturer to the wholesale dealers or consumers if there is a direct sale.

Price per unit	Discount allowed, if any and conditions	Details of taxes including C. Ex. duty/if any, included in the price
5	6	7

Price charged by the manufacturer to the sole distributors, sole selling agents or authorised stockists.

Name of distributor/sole-selling agent/authorised stockists	Price charged per unit	Discount allowed if any & conditions	Details of taxes including C. Ex. duty if any included in the price
8	9	10	11

Price charged by the sole distributors, sole selling agents or authorised stockists to the wholesale dealers or to the consumers.

Price charged per unit	Discount allowed, if any and conditions	Details of taxes including Central Excise duty, if any included in the price.
12	13	14

Assessable value	Full details of the channel of marketing the goods from the stage of clearance of goods from the factory to the wholesale dealers or consumers and the conditions of agreement if any.	Remarks
15	16	17

I/We certify that the information given above is true and correct in all respect.

Signature of the manufacturer or his authorised agent.

Note :—Separate price list should be filed for each excisable commodity manufactured in the factory and assessable to duty 'ad valorem'. If the goods are assessed to duty under different sub-items of the main Tariff item, separate section for the goods assessable to duty under different sub-items should be opened in the price list.

[No. CER 5/68.]

Poona the 9th August 1968

S.O. 2945.—In exercise of the powers vested in me under Rule 5 of Central Excise Rules, 1944, I order cancellation of the Collectorate Notification CER. No. 3/68 dated 29th May, 1968, published in the Gazette of India of 15th June, 1968, as S.O. 2132.

[CER. No. 6/68.]

D. N. LAL, Collector.

CENTRAL EXCISE COLLECTORATE : DELHI

CENTRAL EXCISES

Delhi, the 12th August 1968

S.O. 2946.—This Collectorate Notification No. 5/68-Central Excises, dated 23-5-68, published on page 2568, Part II, Section 3(ii) of the Gazette of India under S.O. No. 1885, shall be treated as cancelled

[No. 6/68.]

R. PRASAD Collector,

मंत्रीमंडल सचिवालय

(सांख्यिकीय की विभाग)

नई दिल्ली, 19 अगस्त, 1968

एस० ओ० 2947.—(1) सांख्यिकीय संग्रहण (केन्द्रीय) नियम, 1959, (2) अधिनियम के प्रवर्तन की तारीख, और (3) सांख्यिकीय संग्रहण तथा सांख्यिकीय प्राधिकारी की नियुक्ति का निम्नलिखित हिन्दी अनुवाद एतद्वारा राष्ट्रपति के प्राधिकार से प्रकाशित किया जाता है और यह

राजभाषा अधिनियम, 1963 (1963 के 19) की धारा 5 उपधारा (1) खण्ड (ख) के अन्तर्गत उसके मूल पाठ का प्रामाणिक हिन्दी अनुवाद समझा जायेगा :—

1. सांख्यिकीय संग्रहण (केन्द्रीय) नियम, 1959

का० आ० 3 तारीख 22 दिसम्बर, 1959—सांख्यिकीय संग्रहण अधिनियम 1953 (1953 का 32) की धारा 14 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निम्न-लिखित नियम, जिनका उक्त धारा की उपधारा (1) द्वारा यथापेक्षित पूर्व प्रकाशन किया जा चुका है, एतद्वारा बनाती है, अर्थात्

1. नाम—ये नियम सांख्यिकीय संग्रहण (केन्द्रीय) नियम, 1959 कहे जा सकेंगे ।

2. परिभासा—इन नियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो—

(1) “अधिनियम” से सांख्यिकीय संग्रहण अधिनियम, 1953 (1953 का 32) अभिप्रेत है,

(2) “सूचना” से नियम 3 में निर्दिष्ट सूचना अभिप्रेत है,

(3) “बागान” से अधिनियम की धारा 2 के खण्ड (ख) के उपखण्ड (IX) में निर्दिष्ट वाणिज्यिक समुद्यान अभिप्रेत है,

(4) “सांख्यिकीय प्राधिकारी” से केन्द्रीय सरकार द्वारा अधिनियम की धारा 4 के अधीन सांख्यिकीय प्राधिकारी नियुक्त किया गया आफिसर अभिप्रेत है, और

(5) “सर्वेक्षण वर्ष” से—

(क) चीनी उद्योग में लगे हुए कारखानों से सम्बद्ध सांख्यिकीय के संग्रहण के सम्बन्ध में, वर्ष की पहली जुलाई से प्रारम्भ होने वाले और अगले वर्ष के 30 जून को समाप्त होने वाले बारह कलेन्डर मास अभिप्रेत है,

(ख) किसी अन्य दशा में कारखाने का वह लेखा वर्ष अभिप्रेत है जो उस वर्ष की जिसके सम्बन्ध में सांख्यिकीय का संग्रहण किया जा रहा है पहली अप्रैल और अगले वर्ष की 31 मार्च की किसी तारीख को समाप्त होता है ।

3. सूचना को तामील—(1) इन नियमों के अधीन सांख्यिकीय के संग्रहण के प्रयोग के लिए, सांख्यिकीय प्राधिकारी किसी कारखाने, औद्योगिक समुद्यान या बागान के स्वामी पर एक सूचना की तामील करेगा जिसमें स्वामी से यह अपेक्षा की जायेगी कि वह सांख्यिकीय प्राधिकारी को—

(क) ऐसी रीति में और ऐसी विशिष्टियों को प्रत्येक उस धारा के लिए जैसी उस सूचना में विनिर्दिष्ट की जाए एक या अधिक विवरणियां दे,

(ख) यदि कारखाना, औद्योगिक समुद्यान या बागान, कम्पनी अधिनियम, 1956 (1956 का 1) द्वारा तथा परिभाषित कम्पनी के स्वामित्व में है तो सर्वेक्षण वर्ष के लिए या यदि कम्पनी का लेखा सर्वेक्षण वर्ष के संबंधी नहीं है तो उस लेखा वर्ष के लिए, जो कि उस सर्वेक्षण वर्ष के यथासम्बव निकट संबंधी हो जिसके लिए लेखा बन्द किया जा चुका है, वार्षिक तुलनपत्र और लाभ और हानि लेखा की और निदेशक की रिपोर्ट की, यदि कोई हो, एक प्रति दे,

परन्तु सांख्यिकीय प्राधिकारी के लिए यह विधिपूर्ण होगा कि वह स्वामी से यह अपेक्षा करे कि वह विवरणी या अन्य दस्तावेज को एक से अधिक प्रतियां दे या भिन्न भिन्न विवरणियां या दस्तावेजें भिन्न-भिन्न तारीखों पर दे या कारखाना औद्योगिक समूख्यान या बागान के क्रियाकलापों के भिन्न-भिन्न भागों के बारे में भिन्न-भिन्न विवरणियां या दस्तावेजें दे ।

(2) उपनियम (1) में निर्दिष्ट विवरणी या अन्य दस्तावेज उस तारीख से पूर्व दी जाएगी जो सूचना में विनिर्दिष्ट की जायेगी और जो तारीख उस कालावधि की, जिससे विवरणी या अन्य दस्तावेजें सम्बन्धित हैं, समाप्ति के पश्चात्—

- (क) वार्षिक विवरणी या अन्य दस्तावेज की दशा में तीन कलेण्डर मास से पूर्व की न होगी,
- (ख) किसी अन्य दशा में एक कलेण्डर मास से पूर्व की न होगी ।

4. दो जाने वाली विशिष्टियां—उन विवरणियों में, जिन्हें देने की अपेक्षा सूचना के अधीन स्वामी से की जा सकेगी, सूचना में यथाउपदर्शित निम्नलिखित सभी या कोई विशिष्टियां अन्तविष्ट होगी अर्थात् :—

- (1) अनन्यता की विशिष्टियां, (2) स्वामित्व और प्रबन्ध का प्रकार, (3) नियत पूँजी के विभिन्न घटकों का मूल्य और उन पर व्यय, (4) कार्यकरण पूँजी के विभिन्न घटकों का मूल्य और उन पर संब्यवहार, (5) नियोजन के व्यौरे, जिनके अन्तर्गत नियोजित व्यक्तियों की संख्या, व्यक्ति घटे जिनमें काम किया गया और कर्मचारियों के विभिन्न प्रवर्गों के लिए किए गए संदाय, आते हैं, (6) कर्मचारियों के विभिन्न प्रवर्गों को प्रोद्भूत होने वाले विशेषाधिकारों या प्रसुविधाओं का मूल्य, (7) विभिन्न प्रकार के प्राइम मूवरों की पृथक्-पृथक् और विभिन्न प्रकार के चालन-बल के लिए, संख्या और शक्ति, (8) मोटरों की संख्या और शक्ति, (9) प्रतिष्ठापित सामर्थ्य, (10) ईंधन, विद्युत और स्नेहकों के उपभोग और उनके परिमाण और मूल्य के व्यौरे, (11) उपयुक्त अन्य सामग्री और सेवाएं जिनके अन्तर्गत क्य की गई कच्ची सामग्रियां, रसायन, दैकिंग सामग्रियां और भंडार और सेवाएं आती हैं, (12) विक्रय के लिए अभिप्रेत उत्पादों का मूल्य और परिमाण, जिसके अन्तर्गत अन्य समूख्यानों के लिए कारखानों द्वारा किए गए कार्य के लिए प्राप्त रकम आती है, (13) विभिन्न प्रकार के ग्राहकों को विक्रय, (14) ईंधनों सामग्रियों और उत्पादों का स्टाक, (15) विद्युत सज्जा से भिन्न सज्जा की तालिका, (16) निर्माणों, संयंत्र और मशीनरी की वर्तमान आयु, दशा और सेवा आयु और (17) कोई अन्य विशिष्टियां जिसके बारे में स्वामी के स्वयंवेकानुसार जानकारी का प्रदाय किया जा सकेगा ।

5. आक्षेप—(1) यदि स्वामी से अपेक्षित विवरणियां या अन्य दस्तावेजें, उसके लेखाओं या अन्य अभिलेखों से संकलित किए जा सकने योग्य न होने के कारण या किसी अन्य युक्तियुक्त हेतुक से उस रीति में जिसमें या उस कालावधि के लिये जिसके लिए देने की अपेक्षा सूचना में उससे की गई है, उसके द्वारा नहीं दी जा सकती है, तो वह उनका प्रदाय उस रीति में या उन कालावधियों के लिए करेगा जो सूचना में निर्दिष्ट रीति या कालावधि के यथासम्भव निकट संवादी हों, और ऐसे अनुपालन को सूचना के पूर्ण अनुपालन के रूप में मानकर बरतने के लिये सांख्यिकीय प्राधिकारी को लिखित रूप में आवेदन, सूचना में अनुशास्त कालावधि के भीतर करेगा ।

(2) जहां कि सांख्यिकीय प्राधिकारी उपनियम (1) के अधीन किए गए आवेदन को प्रतिक्रिया कर देता है, वहां वह समय, जिसके भीतर विवरणियां और अन्य दस्तावेजों पेश करने के लिए सूचना द्वारा स्वामी से अपेक्षा की गई है, उस कालावधि तक विस्तारित कर दिया गया समक्षा जाएगा जो आवेदन करने की तारीख के और सांख्यिकीय प्राधिकारी द्वारा आवेदन के प्रतिक्रिया किये जाने के आदेश की स्वामी द्वारा प्राप्ति की तारीख के बीच के अंतराल के बराबर हो।

6. विवरणियों में परिवर्तन और समय का विस्तार—स्वामी द्वारा आवेदन देने पर या अन्यथा, उन शीर्षों में, जिनके अधीन स्वामी से विवरणियां और अन्य दस्तावेजों का दिया जाना अपेक्षित है, किसी भी ऐसी रीति में जिसमें उससे दिए जाने के लिये मूल सूचना में मांग की जा सकती थी, परिवर्द्धन करने या अन्यथा फेरफार करने के आदेश देना सांख्यिकीय प्राधिकारी के लिये सक्षम होगा और तदुपरि, स्वामी ऐसी पुनरीक्षित विवरणियां और दस्तावेजें देने के लिए उसी प्रकार अपेक्षित होगा भानों उन्हें देने की अपेक्षा उससे मूल सूचना में की गई थी :—

परन्तु जहां कि आदेश स्वामी के आवेदन पर से अन्यथा दिया गया है वहां पुनरीक्षित विवरणियों और अन्य दस्तावेजों को पेश करने के लिए समय परिसीमा, स्वामी द्वारा ऐसे आदेश की प्राप्ति की तारीख से तीन मास या यथास्थिति एक मास के लिए विस्तारित की गई समझी जाएगी :

परन्तु यह और कि सांख्यिकीय प्राधिकारी सूचना में वर्णित समय परिसीमा को किसी अन्य दृष्टि में भी स्वविवेकानुसार विस्तारित कर सकेगा।

7. स्वाभित्व और कार्यकरण में विषय—(1) यदि उस कालावधि के दौरान, जिसके बारे में विवरणियां या दस्तावेजें सूचना में मांगी गई हैं, किसी समय स्वयं स्वामी नहीं रह जाता है, तो वह विवरणियां और दस्तावेजें सांख्यिकीय प्राधिकारी को उस कालावधि के उस भाग के बारे में देगा जिसके लिए वह स्वामी था।

(2) यदि कोई कारखाना, औद्योगिक समुद्यान या बागान उस कालावधि के दौरान, जिसके बारे में उससे सम्बद्ध विवरणियां या दस्तावेजें मांगी गई हैं, कृत्य करना बन्द कर देता है, तो स्वामी विवरणियां या अन्य दस्तावेजें सांख्यिकीय प्राधिकारी को उस तारीख तक की कालावधि के लिए होगा जिसको वह कारखाना, औद्योगिक समुद्यान या बागान कृत्य करना बन्द कर देता है।

8. सूचना की तामील का ग—इन नियमों के अधीन स्वामी पर तामील किए जाने के लिये अपेक्षित किसी सूचना या आदेश की तामील, रसीदी रजिस्ट्रीकृत लिफाफे में डाक के माध्यम से या ऐसी सूचना की तामील उसे स्वामी के कारबाह के स्थान पर परिदृष्ट करके और उसके लिये अभिस्वीकृति अधिप्राप्त करने के लिये सांख्यिकीय प्राधिकारी द्वारा प्राधिकृत किसी व्यक्ति के माध्यम से पारेषण द्वारा की जा सकेगी।

9. भाषा जिसमें जानकारों दी जानी चाहिए—इन नियमों के अधीन दी जाने के लिये अपेक्षित सभी जानकारी अंग्रेजी या ऐसी अन्य भाषा या भाषाओं में दी जायेगी जैसी केन्द्रीय सरकार आदेश द्वारा विनिर्दिष्ट करे।

10. अभियोजन की मंजूरी के पहले हेतुक वर्दित करने का अवसर—सांख्यिकीय प्राधिकारी धारा 11 के प्रधीन अभियोजन को मंजूर करने के पहले, व्यक्ति को यह हेतुक दर्शित करने का पुक्ति-युक्त अवसर देगा कि ऐसे अभियोजन के लिए मंजूरी क्यों न दी जाए।

II सांख्यिक संग्रहण अधिनियम, 1953 (1953 का 32) के प्रवर्तन की तारीख

सं० आई० पी० (क) — 1(22)/56-तारीख 20 नवम्बर, 1956—सांख्यिकीय संग्रहण अधिनियम, 1953 (1953 का 32) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार 1956 के नवम्बर के 10 वें दिन को उस दिन के रूप में नियत करती है जिसको उक्त अधिनियम प्रवृत्त होगा।

III सांख्यिक संग्रहण और सांख्यिकीय प्राधिकारी की नियुक्ति

का० आ० 462 तारीख 18 फरवरी, 1960—सांख्यिकीय संग्रहण अधिनियम, 1953 (1953 का 32) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा निदेश देती है कि :—

- (i) उक्त अधिनियम की धारा 2 के खण्ड (ख) (IX) में यथा परिभाषित वाणिज्यिक समुद्धानों,
- (ii) ग्रीयोगिक समुद्धानों, और
- (iii) कारखानों,

से सम्बद्ध सभी विषयों के सम्बन्ध में सांख्यिकीय संग्रहण किये जायेंगे, और उक्त अधिनियम की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मुख्य निदेशक, राष्ट्रीय सेम्प्ल सर्वेक्षण को ऊपर निर्दिष्ट विषयों के सम्बन्ध में सांख्यिकीय संग्रहण के प्रयोजन के लिये सांख्यिकीय प्राधिकारी नियुक्त भी करती है।

[सं० 16'6'65—तकनीकी.]

मु० प्र० जैन उपसचिव।

